

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2085

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel. WALTER WOLFRATH,

Petitioner-Appellee,

-against-

J. EDWIN LaVALLEE, Superintendent, Clinton
Correctional Facility,

Respondent-Appellant.

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PLAINTIFFS

UNITED STATES OF AMERICA,
ex rel. WOLFRATH, WALTER

DEFENDANTS

DUFFY, J

LaVALLEE, J. EDWIN,
Superintendent, Clinton
Correctional Facility,

TRANSFERRED FROM NORTHERN DISTRICT
OF NEW YORK.
THEIR NO. 74-CV-13 - FEES PAID THERE

28 U.S.C. sec. 2254
WRIT OF HABEAS CORPUS

CAUSE

S.V.

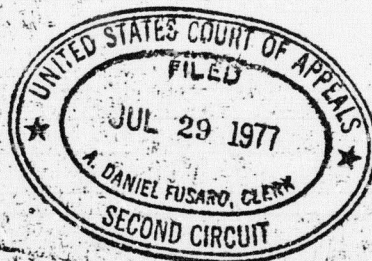
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77-2085 - 100-100-100
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
WALTER WOLFRATH.

Petitioner.

-against

J. EDWIN LAVALLEE, Superintendent,
Clinton Correctional Facility.

Respondent.

NOTICE OF APPEAL

: 75 Civ. 5151
(K.T.D.)

S I R S :

PLEASE TAKE NOTICE that respondent LAVALLEE appeals
from an order rendered by the Honorable Kevin Puffin ^{AND FILED} July 27,
1977, of the United States District Court for the Southern
District of New York, to the United States Court of Appeals for
the Second Circuit insofar as the aforesaid order granted
petitioner relief. Respondent LAVALLEE appeals from each and
every part of that portion of the aforesaid order which granted
petitioner relief.

Dated: New York, New York
July 28, 1977

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
Office and P.O. Address
Two World Trade Center
New York, New York 10047
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TO: MARTIN E. GOTKIN, ESQ.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW
YORK

UNITED STATES OF AMERICA
ex rel. WALTER WOLFRATH,
Petitioner,
-against-
J. EDWIN LaVALLEE, Superin-
tendent, Clinton Cor-
rectional Facility,
Respondent.

NOTICE OF APPEAL

LOUIS J. LEFKOWITZ,
Attorney General

Attorney for.....Respondent.....

Office And Post Office Address
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Personal service of a copy of

within
is admitted this day of
.....19

Assistant Attorney General of
the State of New York

Attorney in the within entitled by depositing a true and correct copy thereof, properly
enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at TWO WORLD
TRADE CENTER NEW YORK, N.Y. 10047 directed to said Attorney at the address within the State designated by
for that purpose.
Sworn to before me this
..... day of, 19

Sir:
Please take notice that the within is a true
copy of a
this day duly entered herein in the office of
the Clerk of

(Dated, N.Y., , 19
Yours, etc.,
LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
To , Esq.
Attorney for

Sir:--
Please take notice that the within
will be presented for settlement and signature
herein to the Hon.
one of the judges of the within named Court, at

in the Borough of
City of New York, on the day of
19 , at M.
Dated, N.Y., , 19
Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
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TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
To , Esq.
Attorney for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
: UNITED STATES ex rel.
WALTER WOLFRATH, :
: Petitioner, : MEMORANDUM AND ORDER
: -against- : 75 Civ. 5151
J. EDWIN LaVALLEE, :
: Respondent. :
-----x

APPEARANCES:

MARTIN E. GOTKIN, ESQ.
Attorney for Petitioner

HONORABLE LOUIS J. LEFKOWITZ
Attorney General, State of New York
Attorney for Respondent
By: Gerald J. Ryan, Esq.
Assistant Attorney General
Of Counsel

KEVIN THOMAS DUFFY, D.J.

In a memorandum and order of June 18, 1976, I reviewed the facts giving rise to Walter Wolfrath's petition for a writ of habeas corpus and concluded that a medical hearing was necessary to determine if statements given by the petitioner were the "offspring of reasoned choice." United State v. Mitchell, 322 U.S. 65, 68 (1944).

Such a hearing has been held and this memorandum, in conjunction with the June 18 memorandum, constitutes my findings of fact and conclusions of law.

Dr. Charles P. Felton^{*/} testified that he reviewed Wolfrath's medical records at St. Vincent's and Bellevue hospitals, together with the transcript of the Huntley hearing before the original trial court and the proceedings before this Court on August 5, 1976 and June 20, 1977. Based upon the notations in the hospital records, he concluded that Wolfrath was admitted to St. Vincent's at 1:29 a.m. At 1:35 a.m., 10 milligrams of morphine sulfate was administered intramuscularly, together with a dosage of tetanus toxicide. The morphine

^{*/} Dr. Felton received his bachelor of science from Xavier University and his medical degree at the University of Geneva. He served an internship at Harlem Hospital. Thereafter, his plans for a residency were interrupted by his service as Chief Medical Officer at the United States Medical Hospital, Plattsburg, New York. He later served as a resident at Knickerbocker, Bellevue and St. Luke's hospitals. He has taught as instructor, assistant professor, and associate professor at the College of Physicians and Surgeons. Presently, he is Associate Director of Medicine at Harlem Hospital. Dr. Felton has had substantial experience with licit and illicit drugs and has served as a consultant to the New York City Drug Addiction Services Agency.

was administered to relieve the pain of the bullet wound in the left forearm. A saline solution, including dextrose and water, was administered intravenously at 3:30 a.m., along with a dosage of penicillin and streptomycin. At 4 a.m., 75 milligrams of demerol and 200 milligrams of sodium luminal were given to Wolfrath. On cross-examination, Dr. Felton expressed his opinion that the demerol had definitely been administered as evidenced by the nurse's notation on the medical record, but acknowledged that the notation confirming the sodium luminal dosage was ambiguous; he concluded that the sodium luminal was most probably given and that the nurse "signed off" or confirmed the administration of the two drugs with the same notation. The exact time of the operation to repair the fracture and remove the bullet is not listed on the hospital records. However, based upon the fact that xylocaine was used as a local anesthetic for the operation, he concluded that the operation would have taken place after the 4 a.m. dosages of pain killers and relaxants. There is no dispute that Detective Spano interviewed Wolfrath at approximately 5 a.m. and that the operation had been completed at the time of their meeting.

Relying upon his own experience and a study by G. M. Smith and H. K. Beecher, Measurement of "Mental Clouding"

and Other Subjective Effects of Morphine, 126 J. Pharmacol. Exp. Ther. 50 (1959), Dr. Felton expressed his opinion that the 10 milligrams of morphine sulfide administered at 1:35 a.m. alone would have created drowsiness and clouding of Wolfrath's mental abilities at 5 a.m. The morphine would ordinarily have its peak effect one hour after intramuscular administration and that it would remain effective from two to four hours.

Dr. Felton indicated that each of the drugs administered in the hospital is known to cause decreased cerebration. He testified that when the morphine sulfate, demerol, and sodium luminal reacted with each other, together with some alcohol which the hospital records indicate was consumed by Wolfrath around 10:30 p.m. on November 4, a synergistic effect is produced. The witness expressed his opinion that the indicated dosages would create a "fugue-like state" in the mind of the patient and would induce a euphoric feeling of invulnerability. He further stated that in his judgment a person in such a state is not capable of making a serious decision.

Based upon Dr. Felton's testimony and the record adduced thus far, I conclude that Wolfrath's statements in response to Detective Spano's questioning were not voluntary and should not have been admissible at trial.

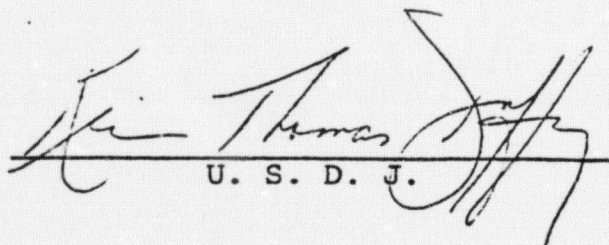
Having reached this conclusion, I must determine whether a new trial must be granted. In Chapman v. California, 386 U.S. 18, 24 (1967), the Court held that "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." At the same time the Court observed that "our prior cases have indicated that there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error" Id. at 23. In a footnote immediately following this statement, the Court cited as an example, Payne v. Arkansas, 356 U.S. 560 (1958), an involuntary confession case.

But whether a per se reversal rule or the constitutional harmless error rule are applied, the result is the same: a new trial must be granted. In arguing the involuntariness of the confession of Detective Spano to the jury, defense counsel stated, "You know that without it, there would be nothing in this case." While an examination of the proof at trial, which included the eyewitness testimony of the two victims, would suggest that defense counsel's statement was the product of zeal, or perhaps a misunderstanding of the fruit-of-the-poison-tree doctrine, it is certainly true that the confession

to Spano undercut the defense argument that the victims had misidentified the defendant. Moreover, the prosecutor effectively utilized the statements to Spano in his summation to rebut the defendant's alternative contention that the crime was involuntary by reason of intoxication. The statements, he argued, demonstrated that "he did know that he did it, and did recollect that he did it." I cannot, therefore, conclude beyond a reasonable doubt that the confession did not affect the jury's verdict.

The petition for a writ of habeas corpus will issue unless the state court promptly grants petitioner a new trial and restores him to pre-trial status.

IT IS SO ORDERED.


U. S. D. J.

Dated: New York, New York

July 27, 1977

1 pgm

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 UNITED STATES OF AMERICA :
6 ex rel WALTER WOLFRATH, :

7 Petitioner, :

8 vs. :

9 EDWIN J. LaVALEE, Superintendent, :
10 CLINTON CORRECTIONAL FACILITY, :

11 Respondent.
12 -----X

13 B e f o r e :

14 HON. KEVIN T. DUFFY,

15 District Judge.

16 New York, New York
17 July 21, 1977 - 10:00 a.m.

18 APPEARANCES:

19 MARTIN E. GOTKIN, Esq.,
20 Attorney for Petitioner.

21 GERALD J. RYAN,
22 Assistant Attorney General
23 for the State of New York.

24 oOo
25

1 pgm

Felton - direct

2

2 THE COURT: Do you have the doctor?

3 MR. GOTKIN: Yes, your Honor.

4 I call Charles P. Felton to the stand.

5
6 C H A R L E S P. F E L T O N, called as a witness
7 by the plaintiff, having been first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GOTKIN:

11 Q Dr. Felton, please state your profession, your
12 occupation.

13 A I am a physician, a medical doctor, and my
14 position is that of associate director of medicine at the
15 Harlem Hospital; director of the division of pulmonary dis-
16 eases; associate professor of clinical medicine at the
17 College of Physicians and Surgeons at Columbia University;
18 I am consultant attending physician to the Drug Addiction
19 Service of Harlem Hospital Center.

20 Q Doctor, would you give us your background,
21 please.

22 THE COURT: Where were you educated?

23 A I received my Bachelor of Science in New Orleans,
24 Louisiana, in 1949; my Doctor of Medicine degree from
25 University of Geneva, Switzerland, 1956; internship, Harlem

Hospital in 1956-1957; residency, internal medicine, 1957 to 1959; chief of medicine, United States Air Force Hospital, Plattsburgh Air Force Base, 1959 to 1961.

THE COURT: That's in New York, right?

THE WITNESS: Yes, sir.

A (Continuing) I returned to New York City to complete my medical training, post-graduate training, as a resident and fellow in medicine for the following four years, two of which were spent at the Knickerbocker Hospital and two years of which were spent at Bellevue Hospital and St. Luke's Hospital, all in post-graduate training.

1965 until present I have been associated with the College of Physicians and Surgeons, beginning as instructor in medicine in 1965, promoted to assistant professor of medicine in 1968, and to associate professor of medicine in 1973.

Q Dr. Felton, could you tell us specifically what experience you have had with drugs and the effects of drugs on the human body?

A Well, I have had experience with drugs such as opiates or narcotics during the past twenty-one years of my medical practice, either using them as pain-killers, for that intent and purpose, and in certain instances such as prior to surgical procedures, or using them also in the

1 pgm

Felton - direct

4

2 treatment of terminal illnesses such as lung cancer.

3 Thirdly, I have been acquainted with drugs of
4 this type in the treatment of individuals who have become
5 addicted to them.

6 THE COURT: When you say "prior to surgical
7 procedure," you mean prior and postoperative care also?

8 THE WITNESS: Both.

9 Q Dr. Felton, have you had experience with a drug
10 Demerol, and morphine sulfate?

11 A Extensively with these two for medicinal purposes.

12 Q Dr. Felton, do we know each other, sir?

13 A Yes. We know each other for the past seven
14 years, I would say.

15 Q In what capacity?

16 A We are neighbors and we know one another from
17 social occasions.

18 Q Doctor, did there come a time when I asked you
19 to undertake to testify on behalf of the petitioner, Walter
20 Wolfrath, in this matter?

21 A Yes.

22 Q That was approximately how long ago?

23 A Approximately two weeks ago.

24 Q Have you and I spent time together on this
25 matter going over the records?

1

pgm

Felton - direct

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A Yes.

3

Q Approximately how long?

4

A Six hours, I should say.

5

Q In addition to that, have you been supplied with the file in this matter which you have reviewed yourself?

7

A I have.

8

THE COURT: Which file are we talking about?

9

MR. GOTKIN: I will get into that.

10

Q What documents have you generally reviewed?

11

A I reviewed several documents, notably among these the hospital record from St. Vincent's Hospital, as well as the hospital record from the Bellevue Hospital, memoranda and proceedings of the court trial, one in August of 1976 in Judge Duffy's court, and another one from, I think, June 20th of this year, 1977, and other memoranda.

17

Q Dr. Felton, I would like you to turn to the hospital record of St. Vincent's Hospital.

19

A I don't have that with me. Could I ask for a copy?

21

(Pause)

22

MR. GOTKIN: Before we proceed, may I ask that Dr. Felton be qualified as an expert.

24

THE COURT: Is there any objection?

25

MR. RYAN: No objection.

1 pgm

Felton - direct

6

2 THE COURT: Fine.

3 THE WITNESS: I have the record of St. Vincent's
4 Hospital.

5 THE COURT: Has this been marked before?

6 MR. RYAN: Yes, I believe it has.

7 THE COURT: This is deemed marked Court Exhibit
8 3.

9 (Court Exhibit 3 deemed marked.)

10 Q Dr. Felton, looking at the records of St. Vin-
11 cent's Hospital, what was the date of the admission of the
12 petitioner, Mr. Wolfrath?

13 A The date of admission was November 5, 1966 at
14 1:29 in the morning.

15 Q 1:29?

16 A 1:29 a.m.

17 Q Where was he admitted?

18 A This is the Emergency Room TOA sheet which is
19 actually the Emergency Room admission sheet.

20 Q The reason for the admission --

21 A The reason for the admission was a gunshot wound
22 to the left forearm.

23 Q Is there any indication on the St. Vincent's
24 Hospital record of any drugs which were administered to
25 Mr. Wolfrath?

xxx

1
2 A Yes. From the Emergency Room admission sheet,
3 first of all, at 1:35 in the morning he received 10 milli-
4 grams of morphine sulfate intramuscularly.

5 Q Before we continue, you say "intramuscularly."
6 Can you explain that to the Court, please?
7

8 A Well, there are several modes of administration
9 of drugs, and this could be by the most natural route which
10 is the oral route, the mouth, by mouth, or they could be
11 administered subcutaneously or intramuscularly, or intra-
12 venously, for the purpose of more rapid entry, or assimila-
13 tion of these drugs in the body, or they can be given by
14 other routes such sublingually, intrarectally, suppository,
15 and this type of thing.

16 The rate of absorption differs according to the
17 route it is given.

18 Q The rate of absorption of a drug such as morphine
19 sulfate --

20 A Muscularly it is quicker.

21 Q It works quicker?

22 A Yes.

23 Q So the first administration of a drug is at 1:35
24 a.m., 10 milligrams of morphine sulfate intramuscularly?

25 A Yes.

Q What is the next administration of drugs?

1
2 A He received tetanus toxide at the same time as
3 the morphine sulfate.

4 The next record of drug administration at St.
5 Vincent's Hospital was on the same day, 11/5/66, at 3:30
6 in the morning; he was given intravenous fluids, normal
7 minimum saline and dextrose and water. That is for the
8 purpose of reestablishing fluid balance in the body. He
9 was given penicillin at that time. He was given strepto-
10 mycin, an antibiotic, at that time, and he was given
11 Demerol, 75 milligrams, intramuscularly, at that time,
12 which is 4:00 a.m. of 11/5. He was given sodium luminal
13 at that time, 200 milligrams also intramuscularly.

14 Q Is there an indication that Mr. Wolfrath was
15 operated on while he was at St. Vincent's hospital?

16 A Yes. There is. There is, indeed.

17 Q From a reading of this record, can you say when
18 that operation took place?

19 A I can surmise from reading the record about when,
20 but there is no specific time of the operation itself men-
21 tioned in the record.

22 Q Drawing an inference from all you have seen in
23 the record, what is the time you would surmise the operation
24 took place?

25 A I would say somewhere after four o'clock and

1 pgm

Felton - direct

9

2 somewhere before five or six o'clock.

3 Q Would you say that the ten milligrams of morphine
4 sulfate administered at 1:35 a.m., the 75 milligrams of
5 Demerol administered at 4:00 a.m., and the 200 milligrams
6 of sodium luminal administered at 4:00 a.m., were all ad-
7 ministered prior to this operation?

8 A I feel reasonably sure of that.

9 Q Why do you give that conclusion?

10 A I say "reasonably." I qualify it because it is
11 not specifically mentioned in the record at what time the
12 operation actually took place.

13 Q Why do you say it was before?

14 A There are some postoperative orders that were
15 carried out for further administration of drugs, and the
16 order was left for the first shot of Demerol to be given on
17 a Q three hours, that is every three hours, and I think that
18 this was planned as a preoperative medication and then,
19 again, as a postoperative medication in that it was in the
20 time just prior to surgery on the hours, that is two or three
21 hours prior to surgery that the preoperative medication was
22 given with an operation that was anticipated to be performed
23 about four o'clock in the morning.

24 Q Would you say that these drugs were in lieu of
25 an anesthesia?

1
2 A These are anesthetic drugs. They are not anes-
3 thetics in the sense that a general anesthetic is thought
4 of by a layman, such drugs as ether or nitro-oxide, etc.,
5 but this is an anesthetic drug. It is a painkiller.

6 Q Could you describe, briefly, the operation that
7 was performed on Mr. Wolfrath at St. Vincent's Hospital on
8 the morning of November 5, 1966?

9 A Yes. Mr. Wolfrath, according to the record,
10 had a comminuted fracture of the left ulna-1.

11 Q Caused by?

12 A Caused by a bullet wound, a missile, and the
13 operation that was performed was a debridement of that area,
14 and a positioning of the broken fragments of the bone, one
15 to another, and then casting of the forearm..

16 Q Would you consider that a major or a minor
17 operation?

18 A I am not a surgeon, but my professor of surgery
19 always said there is no such thing as a minor operation.
20 This is not major-major surgery, but this is a surgical
21 procedure that has to be performed in the operating room.
22 Let me put it this way: It is not --

23 THE COURT: It is not to remove a wart, is that
24 right?

25 THE WITNESS: That's right.

1
2 Q How long did this operation take? Can you deter-
3 mine that from the records?

4 A Again, the record is not specific as to the
5 amount of time that was spent in the operation. I would
6 assume, if you want --

7 THE COURT: Don't assume.

8 Q Dr. Felton, is there any indication in the record
9 of any drugs being administered to Mr. Wolfrath postopera-
10 tively after the operation?

11 A Yes.

12 Q What is that and what time?

13 THE COURT: Is that Demerol on a Q-3 basis?

14 THE WITNESS: Yes.

15 THE COURT: When was the first administration
16 of Demerol on a Q-3 basis?

17 A It was at four o'clock in the morning. That is
18 specific. That is specified in the record.

19 THE COURT: But that's the same time he got the
20 sodium luminal?

21 THE WITNESS: Yes.

22 THE COURT: And the next time he got it was when?

23 THE WITNESS: At seven o'clock in the morning.

24 THE COURT: You may proceed.

25 Q Is there any indication when Mr. Wolfrath was

discharged from St. Vincent's Hospital?

A Yes. There is a discharge summary stating the date, but, again, not the exact time of discharge.

Q Again, there was no time?

A November 6th was the date.

Q Was he discharged to another hospital?

A Yes.

Q To where?

A To Bellevue Hospital.

Q Subsequent to the 75 milligrams of Demerol given at 7:30 a.m. -- that was also given intramuscularly?

A Yes.

Q Was there also given to him in St. Vincent's after 7:30 a.m. --

A Again, the record is specific that he received Demerol at 9:00 or 9:30 a.m.

Q How many milligrams?

A Again, 75 milligrams.

Q And after that?

A I could not find anything in the record that states that the patient received further medication at St. Vincent's.

Q Doctor, in reviewing the records of St. Vincent's Hospital, is there any indication there about the condition

1 of Mr. Wolfrath when he entered the hospital other than the
2 gunshot wound?
3

4 A Would you repeat your question.

5 THE COURT: Take a look at the first page.
6 Is there any indication other than the gunshot wound that
7 he was under the influence of drugs, or alcohol, or anything
8 like that?

9 THE WITNESS: No, sir. There is nothing on it
10 in the record. Well, there is something in the record of
11 the admitting resident.

12 THE COURT: Tell us what that is?

13 THE WITNESS: That is that the patient had been
14 drinking some two to three hours prior to entering St.
15 Vincent's Hospital, specifically in the resident's note:
16 "He last had a drink at 10:30 or 11:00 p.m. 11/4.

17 Q Was there any indication of his sobriety at the
18 time of admission?

19 A There is no such indication.

20 Q Just that he had been drinking a few hours be-
21 fore?

22 A Yes, sir.

23 Q Could you explain what we mean or what you mean
24 in the medical profession when you say someone is tolerant
25 of drugs or tolerant of a drug?

1
2 A That he has built up a certain resistance to
3 those drugs and that it takes an ever increasing amount of
4 that drug to have whatever desired effect the drug is being
5 used for.

6 As far as concerns the drug that we are talking
7 about, there is nothing in the record that would indicate
8 that the individual had been using such drugs before and,
9 therefore, that he should not have any tolerance to these
10 drugs; in other words, that we would consider a non-tolerant
11 individual, or a non -- for layman's purposes -- a non-
12 abuser or non-addicted person.

13 Q Just so that we are clear, the records do not
14 indicate that Mr. Wolfrath was a user of drugs or was in
15 way tolerant of drugs that were administered?

16 A That's right, sir.

17 Q But if a person was tolerant or a user of drugs
18 that were given, the drugs would have less effect than on a
19 person that was not tolerant; is that correct?

20 A I think that's a correct assumption, yes.

21 One thing I must say to you is this: that drugs
22 vary in their effect on five individuals, but for all prac-
23 tical purposes, yes, my answer would be yes.

24 Q Dr. Felton, what is the normal length of time
25 of the effectiveness of the drugs that are administered to

1
2 an individual, specifically the drugs here?

3 A Taking, first of all, morphine sulfate, the
4 duration of that particular therapeutic dose would be two
5 to four hours. Peak action would be in about one hour,
6 peak action. It would be one hour from the time of the
7 administration. But that, again, depends on the route, and
8 we are speaking of the peak action here when it is used
9 orally.

10 THE COURT: Actually, it runs between forty
11 minutes to an hour and a half, just about?

12 THE WITNESS: Yes.

13 A Dr. Felton, in your professional opinion and
14 judgment, would you say that a person that was admitted to
15 the hospital at 1:25 in the morning with a trauma of a gun-
16 shot wound in the left forearm, that was administered 10
17 milligrams of morphine-sulfate or 1:35 a.m., that was given
18 intravenous fluid and penicillin at 3:30 a.m., that was
19 give 75 milligrams of Demerol at 4:00 a.m., that was given
20 200 milligrams of sodium luminal at 4:00 a.m., that was
21 subsequently operated on after that time, and then after
22 the operation was given 75 milligrams of Demerol at 7:30
23 a.m., and another 75 milligrams of Demerol at 9:00 a.m.,
24 would you say that such a person knew what was happening,
25 knew what he was doing, and was in full control of his

faculties?

MR. RYAN: I object to the form of the question unless it is determined at what point we are talking about--

THE COURT: He is talking about sometime after 9:30, I gather.

MR. GOTKIN: No, your Honor.

THE COURT: Then take something away.

MR. GOTKIN: I will rephrase it, your Honor.

Q Dr. Felton, given the factual situation that I just gave you, the admission at 1:25 a.m., with a gunshot wound, the administration of the drugs of 10 milligrams of morphine-sulfate at 1:35 a.m., penicillin at 3:30 a.m., the 75 milligrams of Demerol at 4:00 a.m., the 200 milligrams of sodium luminal at 4:00 a.m., the operation sometime between four and five a.m., would you say that a person who was questioned at approximately five a.m. of that morning, given the drugs that were administered, the fact of the trauma of the gunshot wound, the fact of the operation itself, would you say that that person at approximately five a.m. in the morning knew what he was doing, was in control of his faculties, and was capable of making an intelligent and reasoned judgment?

A I would have to answer the question by saying in my carefully considered opinion that the person did not

1
2 fully what he was doing and that he would not be in full
3 command of his witns because we are speaking of an individual
4 here who is a nonuser or a non-tolerant user of these drugs.

5 Q Would you say then that any statement made at
6 approximately five a.m. was, in effect, involuntary?

7 MR. RYAN: I object to the form of the question.

8 THE COURT: You may answer.

9 A In answer to your question, the drugs that we
10 are speaking about are known to cause a dreamlike sensation
11 or impression in the individual. Demerol alone would cause
12 this fugue-like state, and here we have a combination of
13 several drugs, all of which are capable of creating such
14 an effect. We have several drugs on board in this indi-
15 vidual: sodium luminal, morphine-sulfate, Demerol, and
16 alcohol to some extent, to some unknown extent here. These
17 four drugs working in synergism would potentiate the effect
18 so that you would have an additive effect of the several
19 drugs in that this would -- since each one of these drugs
20 is known pharmaceutically, medically, to cause mental
21 clouding, some decrease in cerebration, etc., that I would
22 say it would be anticipated that the individual would not
23 be capable of making very serious decision because of
24 euphoria that is associated with all of these drugs, very
25 well-known euphoria that is associated, and we know that

1
2 with euphoria comes a feeling of invulnerability; that the
3 individual I think may have had a false sense of security
4 about him, an unreal sense of security about him, and may
5 have certainly made it easier for him or for anyone to
6 extract a confession out of him at that time.

7 Does that answer your question?

8 THE COURT: It answers it as best as you can.

9 Proceed.

10 Anything else?

11 Q Would you then say that what was said by Mr.
12 Wolfrath at five a.m. on the morning of November 5, 1966,
13 was in effect involuntary?

14 MR. RYAN: I object to the question.

15 THE COURT: He has answered that as best as he
16 could.

17 MR. GOTKIN: I have no further questions.

18 THE COURT: How long is it going to take for
19 cross-examination? I expected this to have been over within
20 ten minutes.

21 MR. RYAN: I may be a little longer than that,
22 your Honor.

23 CROSS-EXAMINATION

24 BY MR. RYAN:

25 Q Doctor, in the preliminary questions by Mr. Gotkin

1
2 you were asked about what previous records and what previous
3 minutes you had reviewed with respect to this matter.

4 A Yes, sir.

5 Q That was not quite clear. Did you read the
6 trial minutes of the trial that occurred in 1967 where
7 Detective Spano testified?

8 A I remember the Huntley --

9 Q The Huntley hearing?

10 A Yes.

11 Q Did you go on to read the trial minutes?

12 A No, sir.

13 Q The record at St. Vincent's indicates that Mr.
14 Wolfrath entered the hospital about 1:30 in the morning.

15 A Yes.

16 Q And at 1:35 he was given 10 milligrams of mor-
17 phine-sulfate?

18 A Yes.

19 Q Am I correct in saying that that was a thera-
20 peutic dose?

21 A Yes.

22 Q Would that dose be for the relief of pain and
23 maybe the relief of anxiety?

24 A Yes, sir. I think this was the primary intent
25 of the medication.

1
2 Q You testified that the peak period of time for
3 the effect of that drug administered as it was -- I believe
4 that was intramuscularly -- would be somewhere between
5 forty minutes and an hour and a half?

6 A Yes, sir.

7 Q In terms of our case here, that would be some-
8 time around 2:30 to three o'clock in the morning when the
9 effect of that drug would be at least, if not abated, be
10 in the process of abatement?

11 A I didn't get your question.

12 THE COURT: After an hour and a half, ten milli-
13 grams of morphine-sulfate, does the effect start to wear off?
14 That's what he is saying.

15 THE WITNESS: Yes, your Honor.

16 THE COURT: It does not wear off immediately --
17 until four hours afterwards?

18 THE WITNESS: That's right.

19 Q Again, in terms of our case here, a four-hour
20 period would be 5:30 in the morning and there would be no
21 effect?

22 A No. I cannot say that. It might be seven hours
23 or so before you would have no effect.

24 I can quote you a study that shows that seven
25 hours there was still some effect of the drug.

1
2 Q On the average, in terms of the pharmacological
3 recommendations with respect to this drug, the effect con-
4 tinues for about four hours?

5 A That's right.

6 Q In terms of the alcohol that was mentioned here
7 that was alleged to have been consumed, or at least reflected
8 in the record of being consumed, at about 10:30 or eleven
9 o'clock, there is no known amount. It could have been one
10 drink and that could have been it?

11 A Yes.

12 Q Subsequent to the admission of the morphine
13 you testified that the records indicate that other drugs
14 were administered; is that correct?

15 A Yes.

16 Q Can you take a look at those records with
17 respect to the administration of the drug, looking at the
18 St. Vincent's records?

19 A Yes, Mr. Ryan. I have committed it to memory.
20 You can have your copy of it.

21 THE COURT: At four o'clock he received two
22 antibiotics, penicillin and streptomycin?

23 THE WITNESS: Yes.

24 THE COURT: And then he received 75 milligrams
25 of Demerol plus the sodium luminal?

1 THE WITNESS: Yes.

2 THE COURT: Let's skip the antibiotics. They
3 don't have a synergistic effect with the other drugs at
4 all.
5

6 THE WITNESS: No.

7 THE COURT: So when we talk about drugs we are
8 talking about those which have a narcotic or seminarycotic
9 effect on the body.

10 THE WITNESS: I will limit myself to that.

11 Q Looking at that page that concerns standing and
12 special orders, can you tell whether those were the recom-
13 mended drugs or whether they were, in fact, administered?
14

15 A I can tell that the drugs that we have talked
16 about were all definitely administered since they are
17 checked off in the completed column at the time they were
18 given, with the nurse's initialed signature. All with the
19 exception of one, and that is the sodium luminal, which was
20 supposed to have been given at four a.m. I cannot say
21 definitely that it was given, although it seems that it was.
22 The reason I say that is that the nurse signed off on two
23 lines covering, actually two separate orders, and I assume
24 that for purposes of expediency she simply signed off on
25 these two at the same time. They were given, and I am
assuming now the order was given -- I am assuming that that

1 order was implemented or executed.

2 Q It is not clear in your mind from looking at
3 these records?

4 A In all honesty it is not.

5 #2 Q Again, referring to the record, Doctor, did the
6 record indicate what type of anesthetic was used for pur-
7 poses of the operation?

8 A Yes. The record indicates that in the post-
9 operative summary by the doctor, Dr. Burns.

10 THE COURT: What was it?

11 THE WITNESS: Zylocaine, given intravenously.

12 Q Can you tell from the operative procedure whether
13 the effects of that drug were localized so that it would
14 not get into other parts of the body other than the arm?

15 A I can tell from the operative procedures that
16 the anesthesiologist took the usual precautions to prevent
17 that from happening by applying a double tourniquet to the
18 extremity proximal to the ejection site.

19 Q Would the intravenous fluids or the penicillin
20 that you talked about, that were given to Mr. Wolfrath at
21 3:30 in the morning, be preoperative or postoperative?

22 A I feel reasonably sure that it was preoperative.

23 Q With respect to the Demerol, you could not say
24 whether --
25

1
2 A I feel reasonably sure that the first dose of
3 Demerol was given preoperatively, and that the first dose
4 of sodium luminal was given preoperatively.

5 The last drug, the sodium luminal, is an assump-
6 tion.

7 Q In view of the fact that another drug was given
8 for purposes of anesthetic, would it be a fair statement
9 to say that the administration of Demerol in that amount,
10 75 milligrams, was the type of administration that was
11 designed or intended to relax the person who was about to
12 undergo surgery as opposed to killing the pain in this
13 instance?

14 A A dual effect, yes. It was for a sedative.

15 Q Sedative reasons?

16 A Yes, but you cannot separate the sedation from
17 the analgesia.

18 THE COURT: The use of zylocaine would indicate
19 there was no general anesthesia; is that right?

20 THE WITNESS: That's right.

21 THE COURT: The person was awake during the
22 operative procedure?

23 THE WITNESS: Yes, sir.

24 THE COURT: In such situations, isn't it normal
25 to give the person a relaxant of some type?

1 THE WITNESS: Yes, your Honor.

2
3 THE COURT: In the old days they used to give
4 them whiskey.

5 THE WITNESS: Yes, sir.

6 Q When you described the effect of Demerol on a
7 person in this case in the totality of the circumstances
8 earlier, you suggested that if he were questioned he might
9 have been in a dreamlike state and maybe not given state-
10 ments totally in a voluntary manner; is that a fair state-
11 ment?

12 A That is.

13 Q But that conclusion is based upon your general
14 knowledge of the drugs in question and whatever references
15 you might have gone to prior to this hearing with respect
16 to the effect of these drugs; is that correct?

17 A Yes, sir.

18 Q You cannot say that with 100 percent assurance
19 that in each and every case this, in fact, would be the
20 condition of the person?

21 A I cannot say that and would not want to say that.

22 Q If a person were in the presence of this patient
23 at five o'clock in the morning, would it be, in view of your
24 previous answer, a fair statement to say that that person
25 was in the presence of the patient and described the patient

1
2 as being alert and being rational and making sense, would
3 that also be a consistent condition in view of your previous
4 statement?

5 MR. GOTKIN: I object to that.

6 THE COURT: I will permit it. You may answer.

7 A I am afraid you will have to --

8 THE COURT: If someone is talking to a person
9 who has taken 75 milligrams of Demerol, plus sodium luminal,
10 and he talks to him, and the person seems to be aware of
11 everything that is going on, is it possible that he would
12 be aware of everything that is going on?

13 THE WITNESS: I think it is remotely possible.

14 THE COURT: Suppose he had a habit involving
15 the use or abuse of opiates prior to that time, and, there-
16 fore, had built up a tolerance, would that affect it?

17 THE WITNESS: It might very well not, depending
18 on how intolerant -- how accustomed he is to the drug. It
19 might have very little effect on him.

20 THE COURT: But it is possible?

21 THE WITNESS: I would say yes, sir.

22 THE COURT: You may proceed.

23 Q Doctor, looking at the records, can you tell
24 what the condition, general condition, in terms of the vital
25 signs of the patient was when he entered the hospital?

1
2 A Which hospital?

3 THE COURT: St. Vincent's.

4 A (Cont'g) Specifically the vital signs that I
5 mentioned.

6 I find it rather strange, but they were not
7 mentioned on the examining doctor, the doctor's note at
8 that time or the note of the admitting resident. They are
9 not mentioned. The blood pressure, the pulse, the respira-
10 tory rate, the temperature are not mentioned.

11 Q But in there, there is some examination that
12 refers to blood pressure of 120 over 80 and the pulse rate
13 of 86?

14 A Yes. I am not sure that that's the St. Vincent's
15 Hospital record.

16 THE COURT: Show it to him.

17 THE WITNESS: Is this St. Vincent's?

18 MR. RYAN: It is St. Vincent's.

19 (Pause)

20 THE WITNESS: You are right.

21 Q So it appears in those records that the patient
22 was, generally, in a good state of health?

23 A Yes, sir.

24 Q Did it indicate anywhere in the record the size
25 of the person, the physical size, height and weight?

1
2 A No, sir.

3 Q Would the size of the person make any difference
4 in determining the effect of the drug administered to that
5 person?

6 A Any single drug given to a person would vary
7 with the size of the individual, but we have a norm that
8 we sort of operate within, so that, for example, the thera-
9 peutic dose of morphine sulfate would be between 8 and 15
10 milligrams; but the size does make some difference. The
11 size is very important. For example, in a pediatric age
12 group, the size would be very important in an obese indivi-
13 dual; but a variation of 25 to 30 pounds is not generally
14 a critical matter.

15 Q That study, Doctor, that you mentioned before
16 which concerned itself with the effects of Demerol -- or
17 was that morphine sulfate --

18 A Morphine sulfate.

19 Q -- do you recall the average person's weight in
20 that study group?

21 A Yes. They were given medication of 10 milli-
22 grams of morphine sulfate plus 70 kilograms weight for a
23 140-pound individual. The use there was 10 milligrams, the
24 dosage.

25 Q Prior to testifying today, did you make any

study or reference to the Physicians' Desk Reference?

A Concerning this case?

Q Yes.

A No.

Q Did you look at the book you have in front of you on Pharmacology?

A This, and two other textbooks.

Q Do they list the side effects of Demerol?

A Yes, sir.

Q Could you go to that, Doctor, and --

THE COURT: We have here Pharmacological Principles of Medical Practice, 8th Edition, apparently written by Domingo M. Aviado.

You may proceed.

THE WITNESS: I have before me, Page 101 of the text.

Q Can you turn to "Adverse Reactions"?

A Yes.

MR. RYAN: May I have this marked for identification?

(Court Exhibit 4 marked.)

Q Doctor, this is from the Physicians' Desk Reference and I am not sure of the year of the publication. I believe it is 1971. It is in the 1970's somewhere. Can

xxx

1 you read this into the record, the adverse reactions and
2 contra indications --

3
4 MR. GOTKIN: I have never seen this. It is
5 not in evidence.

6 THE COURT: Do you want it marked in evidence?
7 Sure.

8 MR. GOTKIN: Your Honor, I think I would be
9 entitled to see where that came from. It is a Xerox of a
10 page. I don't know what the book is.

11 THE COURT: The man has represented it to be
12 the Physicians' Desk Reference. If you find it is not, let
13 me know.

14 MR. GOTKIN: I will take that representation.

15 THE COURT: You don't have to read it into the
16 record; there are adverse effects listed there; is that
17 correct?

18 THE WITNESS: Yes.

19 THE COURT: Do you agree with the authorities of
20 that book as to what those adverse effects are or might be?

21 THE WITNESS: Yes, sir. I agree generally with
22 what is said here.

23 Q Did you also have occasion to read the Bellevue
24 medical records?

25 A Yes.

1
2 Q Was there anything in there with respect to any
3 history of seizures with respect to this patient?

4 A Yes.

5 Q Can you tell the Court what that was?

6 A In the history that was taken by the admitting
7 resident in going over the review of systems and past history
8 it is pointed out that the individual admitted to seizures
9 in the past, but that he had not had any seizure -- he was
10 speaking of convulsive seizures here -- in the past seven
11 years.

12 MR. RYAN: I have no further questions.

13 MR. GOTKIN: I have a few questions.

14 THE COURT: Make it two.

15 REDIRECT EXAMINATION

16 BY MR. GOTKIN:

17 Q Dr. Felton, would you state for the record
18 studies you were referring to, please.

19 A It was a study carried on by two investigators,
20 Beecher and Smith, in 1959 and reported in the Journal of
21 Pharmacology and Experimental Therapeutics, which is the
22 official journal, the official organ, of the American
23 Society of Pharmacology and Experimental Therapeutics.

24 Q Is that recognized in the profession as a reli-
25 able study?

1
2 A Yes, it is. It is a respected journal of one
3 of the organizations or perhaps of organized American
4 medicine.

5 Q Isn't it a fact that in that study there is
6 only one drug administered, morphine sulfate?

7 A Yes.

8 Q Just generally, what were the effects of that
9 one drug on young healthy males?

10 A The effects that were determined by the ques-
11 tionnaire submitted to the young men were that in 61 of
12 the individuals tested -- and I do not know what the total
13 number of individuals were -- in 61 the major complaint
14 was mental clouding, also decreased physical activity as
15 well as mental activity, and drowsiness, as well as other
16 side effects such as nausea, vomiting.

17 Q How long did this condition last?

18 A It lasted up to four hours.

19 THE COURT: Hold on.

20 Do you want to let me have a copy of this?

21 I don't want to take your book away from you.
22 Can you Xerox it and let me have it?

23 THE WITNESS: It is not the study itself, but
24 it is a quote and a reference is given.

25 THE COURT: I will take it.

1
2 Q In other words, not to belabor the point in the
3 study of Beecher and Smith, the mental clarity was as the
4 result of the use of only one drug, the morphine sulfate,
5 where in this case we have morphine sulfate, Demerol, sodium
6 luminal, and the original trauma of the gunshot wound,
7 correct?

8 A Yes.

9 Q And we have the operation of the trauma of the
10 operation?

11 A Yes.

12 THE COURT: That was a nice summation.

13 I will reserve decision.

14 (Time noted: 11:10 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

387.
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JUN 24 1977

DEPARTMENT OF LAW
NEW YORK CITY OFFICE

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UNITED STATES ex rel.
WALTER WOLFRATH,

Petitioner, :

-against- :

J. EDWIN La VALLEE,

Respondent. :
-----x

MEMORANDUM AND ORDER

75 Civ. 5151

APPEARANCES:

MARTIN E. GOTKIN, ESQ.
Attorney for Petitioner

HONORABLE LOUIS J. LEFKOWITZ
Attorney General, State of New York
Attorney for Respondent
By: Gerald J. Ryan, Esq.
Asst. Attorney General
Of Counsel

KEVIN THOMAS DUFFY, D.J.

Walter Wolfrath petitions this Court for a writ of habeas corpus. On June 21, 1967, he entered a plea of guilty to robbery in the third degree in Supreme Court, New York County, stemming from an armed robbery of the Don-Lee Studio, a beauty salon, and was sentenced on September 14, 1967, to a term of from five to ten years. Several weeks later, on November 3, 1967, the Assistant

District Attorney moved to vacate the sentence on the ground that it had been discovered that petitioner was a fourth felony offender. As a result of this development, the petitioner was permitted to withdraw his plea of guilty and proceed to trial. The trial commenced after the denial following a hearing of a defense motion to suppress admissions made by Wolfrath. On March 12, 1968, the petitioner was found guilty and was later sentenced to sixteen years to life.

His conviction was affirmed unanimously by both the Appellate Division, First Department, 32 App.Div.2d 742 (1969), and the Court of Appeals, 26 N.Y.2d 943 (1970).

Wolfrath petitioned the United States District Court for the Northern District of New York for a writ of habeas corpus raising a number of claims. Judge Edmund Port, in a memorandum decision, denied the petition. The Court of Appeals for this circuit remanded the petition for a hearing solely on the issue of the voluntariness of Wolfrath's confession.* / Following remand, Judge Port transferred the petition to this district pursuant to 28 U.S.C. § 2241(d).

* / The state's argument that the entire issue of voluntariness is precluded by the state court's finding is foreclosed by reason of the Court of Appeals mandate to the district court to conduct a hearing on voluntariness.

Port
//

Counsel has been appointed for the petitioner, a hearing has been held at which Mr. Wolfrath testified, the state court hearing and trial transcripts and certain hospital records have been received into evidence. This opinion will constitute my findings of fact and conclusions of law.

At approximately 1:30 a.m., on November 5, 1966, Walter Wolfrath walked into St. Vincent's Hospital in Manhattan, complaining of a bullet wound in his left forearm. Wolfrath testified that during this stage of his life he was accustomed to drinking between one and two gallons of wine, plus one pint of isopropyl alcohol, per day. Although there is no evidence of the amount of alcohol consumed by Wolfrath on this particular day, the proof indicates that he had been drinking between 10:30 and 11:00 p.m. on November 4. At the hospital Wolfrath was interviewed by Police Officer James Emburery, who was conducting a routine inquiry into Wolfrath's gunshot wound. Wolfrath told him that the wound was inflicted while someone was robbing him and he was attempting to wrestle the gun from his assailant. No Miranda warnings were given by Officer Emburery.

At approximately 3:45 a.m. on November 5, 1966, Officer Emburery was on patrol with his partner, Officer Philip Camera, in the area of Eighth Avenue and 22nd Street.

For reasons not appearing in the record, the officers stopped a vehicle in that location and spoke to the occupants, a man and a woman. Officer Emburery testified at the state court trial that Officer Camera observed a revolver in the car, removed it, and arrested the occupants, Robert and Laura Wyatt. In front of the Tenth Precinct stationhouse, Robert Wyatt tossed a slip of paper on the sidewalk. Although there is no direct evidence in the record to establish the contents of the paper, it appears that Wolfrath's name was on it. (The trial court had excluded the slip of paper from evidence.)

Meanwhile, Wolfrath entered the operating room at approximately 2:00 a.m. to have the bullet removed from his left forearm and was administered a local anesthetic and antibiotics. At 4:00 a.m., Wolfrath was administered 75 milligrams of Demerol. One hour after the dosage of Demerol was given, a Detective Spano arrived at the hospital with the Wyatts and the weapon seized from their vehicle. Out of the presence of the Wyatts, Spano advised Wolfrath of his Miranda rights, whereupon Wolfrath confessed that the gunshot wound was inflicted while he was robbing another man, and further volunteered that he and the Wyatts had previously robbed the Don-Lee Studio. Apparently, neither Spano nor the officers who arrested the

Wyatts had been aware of the beauty salon holdup prior to Wolfrath's confession.

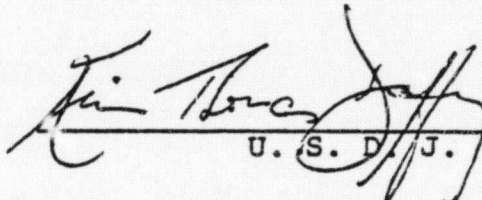
The present state of the record is such that this Court is unable to determine whether the confession was the "offspring of reasoned choice." United States v. Mitchell, 322 U.S. 65, 68 (1944). No medical or other expert testimony has been introduced at the hearing before me or before the state court as to the effect of a 75 milligram dosage of Demerol on a person in Wolfrath's physical condition. The voluntariness of a confession given while under the influence of the indicated dosage is certainly subject to serious challenge. See Jackson v. Denno, 378 U.S. 368 (1964).

The state's argument that since Wolfrath was not "in custody," it was unnecessary for him to understand or waive his Miranda rights and, therefore, the confession was voluntary, is erroneous in fact and law: first, the record supports a finding that Wolfrath was in custody from the moment Detective Spano approached him in the hospital room, advised him of his rights, and proceeded to challenge his prior story, United States v. Hall, 421 F.2d 540 (2d Cir. 1969); second, the issue of voluntariness transcends Miranda and raises an issue of fundamental due process, see Brown v. Mississippi, 297 U.S. 278 (1936), Blackburn v. Alabama, 361 U.S. 199 (1960).

Only after medical evidence is received can this Court assess the totality of the circumstances and determine if the confession was voluntary.

The matter will be set down for an immediate hearing.

SO ORDERED.


U. S. D. J.

Dated: New York, New York
June 18, 1977.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Ex Rel WALTER WOLFRATH,

Plaintiff,

vs.

EDWIN J. LAVALLEE, Superintendent,
Clinton Correctional Facility,

Defendant.

Before:

HON. KEVIN THOMAS DUFFY,

District Judge

August 5, 1976
Room 102; 10:00 a.m.

APPEARANCES

MARTIN E. GOTKIN, ESQ.,
Attorney for the Plaintiff

GERALD J. RYAN, ESQ.,
Assistant Attorney General of the
State of New York
Attorney for the Defendant

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DEPARTMENT OF LAW
CITY OF NEW YORK

75 Civ. 5151

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(Case called.)

THE COURT: Gentlemen, the record should reflect first that we have had an off-the-record discussion. It appears that there is in court the record of the complete trial, the Wade and Huntley hearing and that will be marked as Defense Exhibit A.

We have also discussed the questions as to whether it will be possible to obtain further witnesses and, in particular, those people who were involved with the petitioner's hospitalization at Bellevue and at St. Vincents.

We all recognize, I believe, that we cannot have a total and complete hearing today because we do not have all the witnesses available today but we can start off.

Is there anything else, counselor? Did I misstate anything?

MR. GOTKIN: No, your Honor.

MR. RYAN: No, your Honor.

THE COURT: Mr. Wolfrath, come up here. You are going to be the one and only witness for today.

W A L T E R W O L F R A T H , called as a witness,
having first been duly sworn, testified as follows:

THE COURT: I do not think there is much in the way of examination or cross examination.

1
2 There came a time approximately ten years ago
3 when you were hospitalized at St. Vincents and operated on;
4 is that correct?

5 THE WITNESS: Yes, sir.

6 BY THE COURT:

7 Q You were there after hospitalized at Bellevue;
8 is that correct?

9 A The following day.

10 Q During your hospitalization, the period of your
11 hospitalization, you had conversations with certain police
12 officers?

13 A Yes, sir.

14 Q At the time you were hospitalized, the reason
15 for your hospitalization was to remove a bullet from your
16 arm; is that correct?

17 A Right, sir, from the left arm, the forearm.

18 Q The left forearm?

19 A Yes.

20 Q What is your recollection, if any, as to what kind
21 of medication you were given at that time?

22 A I don't remember exactly what medication I got.
23 I know from what I was told I received was Nembutol.

24 Q Nembutol?

25 A Nembutol capsules and Demarol and I don't

1 remember what I received prior to going into the operating
2 room because I remember -- from what I remember I remember
3 being taken into the operating room and then I don't remember
4 anything until I woke up -- my mother was standing there
5 and they had my arm up in a sling and an IV going on me and
6 I asked for some pain medication then.
7

8 Q Did you get it?

9 A I don't remember if I got it. I think that I did.
10 Probably. I can't say for sure. And then I remember one
11 detective coming in and he says that we got Wyatt outside
12 and Wyatt came in and I tried to swing at him but I don't
13 remember saying anything to the detectives or him saying
14 anything else and he says I got the whole story and that is
15 what I remember on that part.

16 Q Did there come a time thereafter when another
17 detective talked to you?

18 A That would be the next day.

19 Q That is when you were over at Bellevue?

20 A Yes. I got transferred at noon hour, they gave
21 me a shot and I got to Bellevue about 4 o'clock, I asked
22 for medication or to be discharged from the hospital because
23 I was sitting in a wheelchair, they weren't doing anything,
24 and one of the detectives come up and introduced himself and
25 then he brought some people up. He claimed -- he was only

there three, four minutes with me. He says -- later on during the trial I found out I was supposed to have said yes, I know those people. I don't remember making that statement.

Q You said yes, you know those people, and you don't remember making that statement?

A No, I don't remember it. I know I was very -- I was in a lot of pain. The arm was in a cast from here up and I was supposed to keep it elevated and they didn't give me no sling.

Q Wait a second.

When you said a cast from here up, you were indicating the top part of your arm and up actually does not mean up but down toward your hand.

A Yes.

Q They gave you no sling for it?

A They didn't give me no sling then. They had to remove later on, a couple of days later, the center part because there was such a swelling, where the bullet was removed there was swelling there.

Q But you are talking about the center part of the cast?

A Yes, the cast, so they could relieve the pressure.

Q At any other time did any detective or police

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Wolfrath-

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officer interview you? That is prior to the time that you were booked formally?

A No, they had me under guard until the 13th of December, I think it was then they took me from Bellevue to the Tombs and the officer from the 10th Precinct charged me with firing a gun in the city limits, giving false testimony to the police and something else in the Administration Code and I didn't -- that is the only one I seen until the 1st of February when I got time served on that time and they indicted me on robbery, first degree. Then they booked me over the 5th Precinct on the 1st of February. But I didn't see anything else.

Q At the time that you first met the first detective what did he say to you and what did you say to him?

A There was a police officer --

MR. RYAN: It is a policeman conducting a routine investigation on a gun shot and then a detective.

THE COURT: It does not matter, go ahead. It is a cop one way or the other.

A (Continuing) The police officer in the hospital when I first walked in, I told him that I was stuck up and in the process of trying to take the gun away from the person I took the shot.

Q What did he say to you before that, that you did

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Wolfrath-

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not have to talk?

A Nothing, not a word. He asked me where I lived. I gave him my address. He told me what I was doing in that area and I told him I was a super in the area, I was working for a furnished room apartment. Then I went into X-ray and from there on everything is foggy.

Q You don't recall what happened after that?

A I remember seeing the next detective at my bedside with Wyler.

Q Tell me about what he said to you.

A He says, "I have Wyler outside and we got the whole story," and then he brought Wyler in and I tried to take a swing at him. Then from there they just walked out. He didn't tell me anything -- read anything off to me.

Q He didn't have any card that he was reading from?

A No, not at that time. As far as I remember, that is. If he did have I didn't see it.

Q Prior to this time had you been using any Demerol?

A I have never taken any Demerol or any kind of medication other than the hospital medication. I have never used drugs. I have a very bad --

Q How about alcohol?

A Yes.

Q A lot?

2 A Very much.

3 Q At the time you got the gunshot wound --

4 A I had quite a bit of alcohol. I had violated
5 parole from Connecticut State Prison --

6 Q When you say "quite a bit," what are we talking
7 about?

8 A When I reach a peak, prior history, I average
9 about two gallons of wine and one pint of Isopropyl, rubbing
10 alcohol, a day. That is what I average when I am on the
11 drunk. I had been drinking from July until I got locked up
12 on this.

13 Q When was that?

14 A That was November 5.

15 Q You have been averaging --

16 A A gallon, a gallon and a half.

17 Q Every day?

18 A Every 24-hour period, yes. That was my average.

19 Q How long did it take you to dry out?

20 A Let's see, I still was having epileptic seizures
21 two years later from the alcoholism. It usually takes me a
22 year, two years to really get myself back into a healthy
23 position.

24 THE COURT: Do either one of you want to ask
25 anything?

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Wolfrath-cross

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We are going to keep the thing open.

CROSS EXAMINATION

BY MR. RYAN:

Q When the first officer spoke to you in the hospital was this a uniformed officer?

A Right.

Q He asked you about what happened, how you got the wound and you told him that someone tried to rob you?

A Right.

Q Later on you were charged with falsely reporting an incident or filing a false report with the police?

A That is right.

Q And you pleaded guilty to that?

A With the promise that I was going to get time served.

Q Later that morning Detective Spano questioned you, is that correct, or a detective questioned you?

A He didn't question me, he brought my partner in.

Q Mr. Wyatt?

A Mr. Wyatt. He said they found -- from what I understand later they found the pistol on Mr. Wyatt and that is how they got to this, this is supposed to have happened.

Q Did he have the pistol with him, the detective?

A He didn't show it to me. I don't know anything

2 about that.

3 Q That was on about the 5th of November you say?

4 A I am going by the date from what I read from my
5 record it was on the 5th.

6 Q Then you went to Bellevue Hospital?

7 A Yes.

8 Q How much later were you transferred from St.
9 Vincents, the time you say you were operated on, that you
10 went to Bellevue? How much time elapsed?

11 A I don't know, less than 24 hours, I guess.

12 Q Then you were questioned by a detective Hanford
13 over at Bellevue?

14 A Not questioned. He didn't question me. He just
15 came in and brought some people down here that I have to
16 show you.

17 Q Did the people that he had with him, were they
18 the owners of this beauty salon that you had robbed?

19 A That is right.

20 Q Did you recognize them?

21 A No.

22 Q You say you didn't recognize them?

23 A They said I did but I didn't.

24 Q You said you did?

25 A They said I did, I don't recognize them.

2 Q You say he didn't ask you any questions? That is
3 Detective Hanford.

4 A The Bellevue --

5 Q Yes.

6 A No.

7 Q Detective Spano didn't ask you any questions and
8 Detective Hanford didn't ask you any questions?

9 A Spano?

10 Q The Tenth Squad, yes.

11 A The only thing he asked me -- he told me about
12 Wyatt and that he knew the whole story.

13 Q He didn't ask you any questions?

14 A Not that I remember, no.

15 Q And neither did Detective Hanford --

16 A They said they did.

17 Q Did he ask you any questions at Bellevue?

18 A I don't remember.

19 Q Detective Hanford you say did not ask you any
20 questions -- or Detective Spano at St. Vincents and Detective
21 Hanford did not ask you any questions at Bellevue, is that
22 your testimony?

23 A No.

24 THE COURT: No, that is not your testimony or, no,
25 they did not ask you any questions?

1 THE WITNESS: I don't remember. I don't want to
2 say from the record. I know what the record says, you know.

3 THE COURT: I have to read that so do not worry
4 about that. You tell me what you remember.

5 THE WITNESS: I don't remember him asking any
6 questions. He come down and the officer was standing -- the
7 patrol officer guarding me was standing on the side and he
8 come down and he went like this and waved these two people
9 down and I found out in the trial and of course knowing they
10 were the witnesses against me in the robbery.

11 Q So I am clear, you don't recall whether Hanford
12 at Bellevue asked you any questions, the detective?

13 A Right.

14 Q And Detective Spano at St. Vincents did not ask
15 you any questions; is that correct?

16 A He told me.

17 Q But he did not ask you a question?

18 A No. Are you inquiring did he ask me any questions
19 about the robbery?

20 Q Yes.

21 A No.

22 Q Or about a gun?

23 A No.

24 Q Did you tell Detective Spano that you had lied to
25

the first uniformed officer?

A Did I tell him that?

Q About the gunshot wound.

A The next day after I got out of the hospital I was offered and I took the plea so I admitted that the gun was mine.

Q Did you tell Detective Hanford you lied to the first officer about the gunshot wound?

A I don't remember that.

MR. RYAN: I have no further questions at this time.

THE COURT: I am willing to continue this case until you men try and get the records. I do not think we can complete it. Do you agree?

MR. GOTKIN: I agree.

MR. RYAN: I agree.

MR. GOTKIN: What happens if he can't get the records, which is a very real possibility?

THE COURT: Let's see if you can get them first.

REDIRECT EXAMINATION

BY MR. GOTKIN:

Q Mr. Wolfrath, when you were in St. Vincents Hospital do you know whether or not you were in a prison ward at that time?

1 A I don't know.

2 Q But you do know that you saw a uniformed police
3 officer standing in your room?
4

5 A I believe that it was outside -- I don't remember.

6 Q He was guarding your room?

7 A Yes, I was supposed to be under guard. I know
8 when I was at Bellevue I was under guard.

9 Q Were you under guard in St. Vincents?

10 A I don't know.

11 Q You say you saw a guard outside in St. Vincents?

12 A Possible.

13 Q Is that right?

14 A Possible.

15 MR. GOTKIN: Judge, I ask those questions for the
16 reason that counsel in his brief insisted that he was, I
17 assume, arguing arguendo that even if the rights were not
18 given that they did not necessarily have to be given because
19 the defendant was not under arrest and that is the reason
20 that I brought those two facts out.

21 THE COURT: All right.

22 Counselor, believe it or not, I used to be an
23 advocate. Most of the time I can guess where you are going.

24 What would be a fair timetable just to let me know
25 as to when you can get these records or if they are available

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Wolfrath-redirect

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and what we can do about it?

MR. GOTKIN: Can I consult with counsel for a minute?

THE COURT: Sure.

MR. RYAN: I can let the Court know late today or tomorrow morning what progress I have made in getting the records.

THE COURT: Tomorrow afternoon at 3 o'clock. Can you do it by then?

MR. RYAN: Yes, your Honor.

THE COURT: Talk to Mr. Castell, the young man over there. Have you got the number?

MR. RYAN: Yes, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Marshal, have him stay at least until tomorrow afternoon at the MCC, all right? And you, don't try and pick on this marshal.

Spano - People - Direct

L E O N A R D S P A N O, Police Detective, Shield
No. 1395, attached to the 10th Squad, Police Department, City of New York, called as a witness on behalf of the People, on the hearing, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALBRECHT:

Q Detective, on November 5, 1966, were you assigned to the 10th Squad? A Yes, I was.

Q And what was your tour of duty, do you recall?

A Night duty, from 5.00 p. m., to 8.00 a. m.

Q Did there come a time that evening that you had a conversation with either Patrolman Emburey or Patrolman Camera in regards to an arrest that they had made?

THE COURT: There is no testimony that they made an arrest. All he testified to is that he went to the St. Vincent's Hospital.

MR. ALBRECHT: I realize that.

THE COURT: And talked to him there and then he left him there. That is all he said.

MR. ALBRECHT: I realize that. This is another arrest, something else, a totally different arrest.

Spano - People - Direct

THE COURT: All right.

Q Did you have a conversation with him regarding that arrest? A Yes, sir.

Q And did you interview the people who were arrested? A Yes, sir.

Q And did there come a time when you brought those people who were arrested to St. Vincent's Hospital? A Yes, sir.

Q What were the names of the people who were placed under arrest and whom you brought to St. Vincent's Hospital? A Laura and Robert Wyatt.

Q Did you have any contraband with you when you went to St. Vincent's Hospital? A Yes, sir.

Q What did you have with you? A I had a .38 caliber Colt revolver.

Q And did there come a time when you met a person now known to you as being Walter Wolfrath? A Yes, sir.

Q Do you see him in the courtroom at this time? A Yes, sir.

Q Would you please point to him. A There (indicating).

THE COURT: Indicating the defendant.

Q Approximately what time and where did you meet

Spano - People - Direct

with the defendant? A It was approximately 5.00 a. m., on November 5, at St. Vincent's Hospital.

Q Do you remember where in the hospital or what room? A It was upstairs; I don't remember the room.

Q And what was the defendant's position? Was he in bed? was he in a chair? or do you recall? A He was lying down. He was lying in bed.

Q Upon entering into the room, did you say anything to him?

MR. DIRENZO: Objected to.

THE COURT: I will allow it. Overruled. You may have an exception.

A I said I was Detective Spano from the 10th Squad, and I immediately filled out a form.

Q Well, what did you say to the defendant, if anything? A I said, "There is something I have to read to you, Walter," and I immediately advised him of his rights.

Q Well, when you say you advised him of his rights, what did you read to him and what, if anything, did he say? A I said to him, "You are hereby advised that you have a right to remain silent and you don't have to say anything unless you choose to do so." I said,

Spano - People - Direct

"Did you understand this?" He stated, "Yes."

I said that, "Anything you say might be used against you in court." I said, "Do you understand this?" He said, "Yes."

I said, "You have a right to an attorney during any part of the questioning, now or in the future. Do you have an attorney?" He stated, "No."

"If you haven't got an attorney, the court will appoint one to represent you."

Q What did he say? A He said nothing.

MR. DIRENZO: What did he say?

THE WITNESS: He said, "Okay," that is all.

Q Did you say anything to him-- By the way, the form that you had in your hand when you were reading just now, was that the exact form that you had on that date?

A Yes, sir.

Q Did you make any notations on that form? A Yes, sir, I did.

Q And is that form in substantially the same condition today as it was on the date you utilized it?

A Yes.

MR. ALBRECHT: May we have this form--the fact that the officer was reading them--marked for identification?

Spano - People - Direct

THE COURT: Deemed marked No. 2. Marked 2 for identification. That is People's 2.

MR. ALBRECHT: Yes, Your Honor.

THE COURT: This will be 2 for identification.

THE CLERK: People's Exhibit 2.

THE COURT: So I want you to keep a check.

MR. ALBRECHT: It is deemed marked, Your Honor?

THE COURT: People's 2.

MR. ALBRECHT: Deemed marked, Your Honor?

THE COURT: Deemed marked. I said that.

MR. ALBRECHT: Thank you.

THE COURT: The rights form, that is all.

[THE RIGHTS FORM REFERRED TO WAS DEEMED MARKED
PEOPLE'S EXHIBIT 2 FOR IDENTIFICATION.]

Q Officer, upon saying those statements which you just read to the defendant, what did the defendant say, if anything? A Nothing much at this time. After--

Q In other words, in response to each question, did he make an answer? A Yes, he gave the answer..

Q What were his answers? A His answers were "Yes," and as to "You have a right to have an attorney present with you now or in the future. Do you have an attorney?" he stated "No."

Spano - People - Direct

Q And then what was the question to him? A Then I said, "If you can't afford an attorney, the court will appoint you one."

Q And what did he say as to that? A Nothing. He just nodded his head.

Q And did you say anything to him then? A I then says to him, "I have a couple of friends of yours here." I says, "I have the Wyatts here."

Q Now, were they in the room with you? A Not at this time.

MR. DIRENZO: ^{is} This/objected to, Your Honor.

THE COURT: A conversation had with the defendant? Overruled.

Q And who was in the room with you, do you recall?
A I don't recall.

Q And what did you say to him and what did he say to you at that time? A I said, "Walter, we got the true story about how you got shot." I says, "I don't believe the story that you gave us originally." And with this he says, "Yes, I was telling a lie."

THE COURT: I don't hear you.

THE WITNESS: He said at that time, "I was telling a lie." So I said, "What actually happened?" He stated

Spano - People - Direct

that he and his friends were going to do a stick-up to get some money. He went to the basement, to the men's room--

Q Where? A --K in the Hilton Hotel.

Q Did he say the Hilton Hotel? A Yes. "And while there, I approached a man and said, 'This is a stick-up; give me your money.'" He said that the victim turned around and struggled with him and he was accidentally shot.

Q Did he say who shot him? A The fellow he tried to stick up.

Q Did Wolfrath say how he got shot and who held the gun that shot him? A During the struggle--

Q Yes. A --he got shot.

Q And he didn't say who pulled the trigger?

A No, he didn't.

Q Did he say with what weapon he got shot?

A With the gun.

Q What gun? A I showed him the gun that was recovered.

Q That was the gun that you just mentioned? A Yes.

Q Continue, please. A I asked--

Spano - People - Direct

THE COURT: All right, go ahead.

THE WITNESS: I asked him who was he with. He stated he was with this fellow, Robert Wyatt. He said that Wyatt didn't do anything but stood around as he was fighting with this man, and as soon as he got shot, the two of them ran away. He then went to his apartment. They decided to go to the hospital. They went to the hospital and they came up with the story, saying that he was shot on Eighth Avenue. After this he said, "Look, while I am telling you this, there is something else I have to tell you."

Q Did you ask him or did he say this to you?

A He was telling me, sir. He said that a few days previous he had done a stick-up and that he stuck up a beauty salon.

Q Now, before you go any further, officer, at that time, on that date, did you have any knowledge whatsoever of a ~~xxx~~ stick-up of a beauty salon? A No.

Q Continue. A I asked him to describe the place that he is supposed to have stuck up. He said it was somewhere within a few blocks' radius of the Hilton Hotel. I said, "Have you any idea what precinct it might have been in?" He stated, "No." I said, "Is there

Spano - People - Direct

anything that you could describe it?" He said, "No. It is a few blocks from the Hilton Hotel." He said you had to go up on an elevator. I said, "Do you recall at least what floor it was on?" He said, "No." He says, "I know it was a beauty salon."

Q Did he say how he stuck it up? A All he said is that he went in there and he stuck it up and there was a man and woman there.

Q Did he say whether he used any weapon or not?
A He had his gun.

Q He said he used his gun? A Yes.

Q Was he referring to any particular gun? A To this particular gun I had in my possession.

Q Did he say he did it with anybody? A I asked him was Wyatt in on that one in the beauty salon. He stated that Wyatt was downstairs.

Q Now, officer, upon receiving this information, did you make any communication to other police officers regarding the information that you had received as to the beauty salon? A Yes.

MR. AIBRECHT: You may inquire, sir.

CROSS-EXAMINATION

BY MR. DIRENZO:

Spano - People - Cross

Q Officer, did you make any report in connection with this investigation? A I arrested him for it. I have reports in my hand, sir.

Q What do they consist of? A A UF-61, the original investigation, a rights form, and ~~an~~ a UF--they call it a DD-5.

Q Progress report? A When you close out a case with the final disposition in court.

MR. DIRENZO: May I see those, Your Honor?

THE COURT: Yes. Deemed marked for identification. Mark them separately so we will know which ones you are referring to. Deemed marked. That would be starting with C. "C" would be deemed marked, UF-61.

THE CLERK: No. 6563, File No. 17.

[THE DOCUMENT REFERRED TO WAS DEEMED MARKED
DEFENDANT'S EXHIBIT C FOR IDENTIFICATION.]

THE COURT: D is what, a DD-5?

THE CLERK: "D" is a rights form.

THE COURT: Another rights form, sir? Is that the same thing we just deemed marked?

THE WITNESS: No, Your Honor.

THE COURT: I mean C.

THE WITNESS: No. These are rights forms for the Wyatts, Laura and Robert.

Spano - People - Cross

THE COURT: I see. All right. These are rights forms. How many papers, two?

THE CLERK: No. There is one sheet and then there is another one, a rights form, for Robert Wyatt.

THE COURT: Put them together and mark them.

THE CLERK: So the two of them will be--there are three of them, Judge.

THE COURT: There are three of them?

THE CLERK: Excuse me. There is one here for Walter Wolfrath.

THE COURT: That was deemed marked People's Exhibit 2.

THE CLERK: It is still part of that. Then there are two, one for Robert Wyatt and one for Laura Wyatt; and if Your Honor wants, we will mark those "D."

THE COURT: "D", that's right.

THE CLERK: The two of them together.

[THE RIGHTS FORMS REFERRED TO WERE DEEMED MARKED DEFENDANT'S EXHIBIT D, FOR IDENTIFICATION.]

THE CLERK: This is a DD-5.

THE COURT: "E"?

THE CLERK: Right, Judge.

THE COURT: A DD-5?

Spano - People - Cross

THE CLERK: Yes, sir, a DD-5, again 6563, file No. 17. That is E. All deemed, if Your Honor please, for identification?

THE COURT: Deemed.

MARKED
[THE DD-5 REFERRED TO WAS DEEMED/DEFENDANT'S EXHIBIT E FOR IDENTIFICATION.]

BY MR. DIRENZO:

Q Now, as the result of a communication you received from Patrolman Emburey and Patrolman Camera, you went to St. Vincent's Hospital? A Yes, sir.

Q And when you went to St. Vincent's Hospital, did you know the specific investigation you were covering or going on? A Yes, a man was shot in the hospital.

Q You mean there was a man in the hospital who had been shot? A Yes, sir.

Q And, tell me, did I understand you correctly to testify that you went to the hospital with a revolver? A Yes.

Q What revolver was that? A It was a .38 Colt revolver.

Q Where did you get that revolver? A I got it from the officers.

Q Did you ascertain where they got it? A Yes.

Spano - People - Cross

Q Where did they get it? A They got it from the car of the Wyatts.

Q You arrested Wyatt for possessing the gun?

A No, I didn't; the officers did.

Q They did? A Yes, sir.

Q Now, when you got to the hospital, did you make any inquiry in the hospital as to the time that the patient or the defendant was signed into that hospital?

A No, I don't believe I did.

Q You did not? A No, I didn't.

Q By the way, he was perfectly calm and responsive to the questions you put to him, was he not? A Yes, sir, he was.

Q No problem at all about it, right? A No.

Q In other words, every question you put to him, he made a cogent reply to, is that right? A Yes, sir.

Q What time was it? A This was about five o'clock.

Q Tell me, did you know that he had been just operated on? A Did I know he has been just operated?

Q Yes. A He didn't look that way to me.

Q Well, now, let me ask you something. Was he under any sedation--ether, any kind of an anesthesia?

A Not to my knowledge.

Spano - People - Cross

Q Well, did you learn that he was operated on at two o'clock that morning? A Not that I knew of.

THE COURT: I don't hear you.

THE WITNESS: Not that I knew of.

Q His arm in a cast? A I saw his arm in a sling.

Q Was he receiving intravenous feeding or don't you remember that? A I don't recall if he was receiving intravenous feeding.

Q And he was on a bed, correct? A Yes, sir.

Q Lying down? A Yes, sir. He was more or less not completely lying down. He was sort of sitting up; his head was on an incline.

Q Half sitting up, half lying down? A Yes.

Q Now, you tell me the specific questions you say you asked the defendant when you were questioning him.

A Other than the rights form, sir?

Q That's right. Incidentally, is that the first thing you said to him? A When? No, the first thing I said was, "How do you feel? How do you feel?"

Q What did he say to you? A He says, "Fine."

Q He said, "I feel fine"? A Yes, sir.

Q Go ahead. Did you say anything else to him?

A No. I said, "I am glad you didn't get hurt much."

Spano - People - Cross

Q By the way, when he said "I feel fine," was his voice weak or was it strong? A Well, it was normal.

Q It was normal? A That's right.

Q Perfectly normal? A That's right.

Q The man was shot, had been operated on, was in a cast, receiving intravenous feeding, and he was perfectly normal; that is your answer?

MR. ALBRECHT: There is no testimony here that there was any intravenous feeding.

THE COURT: No. He asked him whether or not he noticed any intravenous feeding. "I don't recall." He did ask him that question. I will allow it. Overruled.

Q What is your answer? A My answer is that he was surprisingly cool.

Q An iron man? A I beg your pardon.

Q An iron man?

THE COURT: Sustained. Your objection is sustained, Mr. Albrecht.

Q Now, you tell me, after you asked him how he felt, the first question you put to him. A After I asked him how he felt, I said, "I am glad you didn't get hurt much." I started to read him his rights. I said-- I read his rights to him.

Spano - People - Cross

Q . Well, then, tell me what you read; tell me what you said.

THE COURT: Give him the form. Give him the exhibit, People's Exhibit 2 for identification, deemed marked.

A All right? I said, "You are hereby advised--" I said, "I have to read this to you. Let me read this to you." I said, "You are hereby advised that you have a right to remain silent and you do not have to answer, have to say anything, unless you choose to do so." I said, "Do you understand this?"

Q And what did he say? A He stated, "Yes."

Q "Yes"? A "Yes."

Q In other words, he made a one-utterance answer to you, "Yes." Next question. A "Now, I want to tell you anything you say may be used against you in a court of law." I said, "Do you understand this?" And he said, "Yes."

Q He said, "Yes," a second one-word utterance, a answer. Go ahead. Next. A Right. Then, "You have a right to have an attorney present with you during any questioning now or in the future. Do you have an attorney?" He stated, "No."

Spano - People - Cross

Q So a one-word answer, "No," right? A Yes.

Q Go ahead. That is three questions. Go to the next. A I said, "If you don't--if you can't afford an attorney, the court will appoint one to represent you.

Q And what was his answer to that? A Nothing. He just--

Q What was it? A Nothing.

Q He didn't answer? A No. He just looked at me.

Q He didn't ~~a~~ answer? That is your answer now?

A Verbally, no.

Q No. He didn't answer you? A That's right.

Q Next question. A "If you do not have an attorney presently available, you have a right to remain silent until you have an opportunity to consult one."

Q And what was his answer? A He just--nothing verbally.

Q He said nothing? A Nothing.

Q He remained mute? A No.

Q You say he said nothing? A He said nothing.

Q That is all I want to know about that. Now, by the way, what time do you say you put these questions to him? A At five o'clock in the morning.

Q Would you look at that report and see if I am

Spano - People - Cross

in error. A On this report it says one. Apparently I made a mistake, because I did not get this report until a quarter to four.

Q You made the mistake at what time? A I put down one o'clock. ~~xxx~~ Apparently it was a mistake, because I did not get the report until 3.45.

Q In other words, as far as your records are concerned, he was advised of his constitutional rights before you even spoke to him. A According to this, according to this, I couldn't possibly question him at one o'clock in the morning.

Q Just let me ask you this question, Detective.

A Yes, sir.

Q Will you search your recollection now and see if you made any other mistakes.

MR. ALBRECHT: I am going to object to the form of that question.

THE COURT: Overruled.

A I made no mistakes, sir.

Q I didn't make them.

MR. ALBRECHT: I am going to object to this.

A Well--

THE COURT: Sustained. Strike it from the record.

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Spano - People - Cross

Q Now, tell me, when you went to St. Vincent's Hospital-- Incidentally, at any time while you were there, was there a nurse in attendance with the defendant?

A I don't believe so.

Q Never saw a nurse? A No.

Q Ever see a doctor attending him? A No.

Q You never saw him receive any medication at all? A None.

Q And you would say his voice was strong and responsive every time? A His voice was normal, sir.

Q Are you familiar with his normal voice? A I believe so. I spoke to him after we went to court several times.

Q I see. I see. Now, you went there with someone, did you not? A With Wyatt and his wife.

Q They are complainants? A No.

Q Who are they? A They are, they were prisoners.

Q I see. Did they make any identification of the defendant? A They knew Mr. Wolfrath.

Q I asked you-- A Did they make identification of him?

Q Yes. Did they file any complaint against him or make any identification?

Spano - People - Cross

THE COURT: Who is this you are talking about now?

MR. DIRENZO: These are the Wyatts.

THE WITNESS: The Wyatts were with him at the time that this happened.

THE COURT: That is not his question to you.

THE WITNESS: Well, did they make any complaints? No, they had no complaints.

Q Did you ask the Wyatts to identify Wolfrath?

A Yes.

Q And at the time you asked them to identify him, who was present? A I don't know. Maybe the officer was there. I am not sure.

Q Uniformed? When you say "officer," you mean Emburey? A I don't know if he was there or not; I am not sure.

Q If there was an officer there, he was there in uniform, right? A There might have been.

Q Tell me, the man they were asked to identify was the defendant and he was in bed? A He was in bed.

Q Is that right? Didn't give him a line-up? A No.

MR. ALBRECHT: For whom, the other prisoners?

MR. DIRENZO: I know what I am asking.

Spano - People - Cross

THE COURT: All right. If there is any objection, make it. And I understand your rising to make a statement was in the nature of an objection, and that objection is overruled.

Q Now, tell me, isn't it a fact that the defendant's arm was in a cast, suspended by a pulley? A No, it wasn't.

Q Then I take it that your answer is it was not.
A It was not.

Q No question about that? A The way I recall it is his arm was in a sling on his side.

Q You never saw it up in a pulley? A No.

Q Now, outside of those six questions that you say you put to the defendant, to which questions he made a one-utterance answer, did you ever once after that say to him, "I want to remind you you are entitled to a lawyer"? A No, I never did.

Q "And you don't have to make any answers," did you ever repeat the admonition to the defendant? A No, sir, I never did.

Q Did anyone in your presence ever repeat the admonition to the defendant? A No.

MR. DIRENZO: No further questions.

Spano - People - Cross

Q Oh, by the way, did you record those answers on your memo book? A Which answers?

Q The answers you say you got from the defendant.

A These answers I did get from the defendant?

Q Yes. A I have them right here.

Q Those are the ones you put on that form? A Yes.

Q Let's see it. A [Handing.]

MR. DIRENZO: If Your Honor please--

THE COURT: Yes, sir.

MR. DIRENZO: --at this time I offer in evidence or ask that it be deemed marked in evidence the UF-49 form of the Police Department.

THE COURT: What?

THE CLERK: People's Exhibit 2, I take it, sir.

MR. DIRENZO: UF-49.

THE COURT: Is that the one that was deemed marked People's Exhibit 2?

MR. ALBRECHT: I have no objection.

THE COURT: Received.

MR. DIRENZO: And the specific questions, the ask questions with the answers thereon.

THE COURT: Let me see it.

Spano - People - Cross

MR. DIRENZO: Two of them have no answers.

THE COURT: All right. You want it deemed marked in evidence?

MR. ALBRECHT: Yes, I would like it deemed marked.

THE COURT: You want to make the offer?

MR. ALBRECHT: I join in the offer. I have no objection.

THE COURT: Mark it No. 2 in evidence, deemed marked. Mark it deemed in evidence instead of identification.

[THE RIGHTS FORM REFERRED TO, PREVIOUSLY DEEMED MARKED PEOPLE'S EXHIBIT 2 FOR IDENTIFICATION, WAS ADMITTED IN EVIDENCE AND DEEMED MARKED PEOPLE'S EXHIBIT 2.]

[Off-the-record conference between Mr. Direnzo and the defendant.]

THE COURT: Well, Mr.--

MR. COIRO: No further questions, Your Honor.

THE CLERK: May we just ~~xxx~~ recess this case for a moment, please.

* * * * *

MR. ALBRECHT: Next witness?

THE COURT: Are you finished with him?

MR. DIRENZO: I am.

Colloquy

THE COURT: Are you finished with him?

MR. ALBRECHT: Yes.

THE COURT: All right.

[Witness excused.]

THE COURT: Next witness.

Are you taking the stand?

MR. ALBRECHT: I am.

THE COURT: Get another lawyer.

MR. ALBRECHT: Can I testify in the narrative, Judge?

THE COURT: No, sir.

MR. ALBRECHT: I will call my office to get an assistant.

THE COURT: Get another District Attorney in, will you.

[At this point the Court declared a short recess.]

AFTER RECESS,

HEARING RESUMED.

[Mr. Albrecht, Mr. Dierenzo, Mr. Coiro, the Defendant, and Mr. Patrick J. Moynihan, an Assistant District Attorney are present.]

THE CLERK: People against Walter Wolfrath. Trial continued.

The defendant and his counsel are present in court.

Spano - for people - direct

Q How long have you been a detective?

A 15 years.

Q Are you married, sir? A Yes, sir.

Q Do you have children? A Four.

Q Detective Spano, on November 5, 1966, what was your assignment? A I was on night duty in the 10th Squad.

Q Did there come a time when you observed people with Patrolman Emburey and Patrolman Camera? A Yes.

Q In the squad or in the precinct building?
A Yes, sir.

Q Did you go some place with these people?
A Yes, sir.

Q Did you have a conversation with these people?
A Yes, sir.

Q And where did you go? A St. Vincent's Hospital.

Q Who did you go to St. Vincent's Hospital with, to the best of your recollection? A With the two patrolmen, Emburey, Camera, and my partner at that time, Detective Chartrand.

Q Did you have anybody in custody with you when went to the hospital? A No, not with me.

Q Not with you? A No.

Spano - for People - direct

Q When you got to the hospital, were ther other people in custody in the group? A Yes.

Q Who was that?

MR. DIRENZO: Objected to.

THE COURT: I will allow it; overruled.

A That was Laura and Robert Wyatt.

Q Did you have any objects in your possession at the hospital when you went there?

MR. DIRENZO: Objected to.

THE COURT: I will allow it; overruled.

A Yes, sir.

Q What did you hav? A I had a revolver.

Q Do you know the number and description of that revolver that you had? A It was a .38 caliber Colt revolver serial No. 138406.

Q I show you People's Exhibit 2. I ask you whether that was the object, the revolver that you had with you that early morning at St. Vincent's Hospital on November 5, 1966? A Yes, sir.

Q ~~X~~ * Approximately what time did you arrive at the hospital? A Approximately 5 o'clock in the morning.

Q Had you previously had conversation with Patrolman Camera and the Wyatts? A Yes.

Spano - for People - direct

Q Did there come a time when you met a man in the hospital and had a conversation with him? A Yes, sir.

Q Do you see that man in this courtroom? A Yes, sir.

Q Would you please point to him? A Walter Wolfrath (indicating.)

MR. ALBRECHT: May the record indicate the officer has pointed to the defendant, your Honor?

MR. DIRENZO: Correct.

THE COURT: Yes, sir.

Q Where was the defendant when you had this conversation with him? A He was upstairs in a ward.

Q In what position was he when you had this conversation with him? A He was lying down with his head propped up.

Q Who was there, if you know, at the time you had the conversation with him? A Well, there was people in the ward. There was he and I.

Q ~~At~~ Do you know whether there were any law enforcement personnel present? A No, I don't believe there were.

Q What did you say to Walter Wolfrath, and what did Walter Wolfrath say to you, if anything?

MR. DIRENZO: Objected to, your Honor.

THE COURT: I will allow it; overruled.

Spano - for People - direct

A Well, I advised him of his rights at this time.

MR. DIRENZO: Objected to.

Q What did you say?

THE COURT: I will sustain that objection by Mr. Direnzo, because when he said advised him of his rights, I don't know what that means.

Q What did you say? A I said to him, "Walter, I k now know the true story. I ~~have~~ have some friends of yours yere, the Wyatts." I~~ke~~ says, "I want you to know I have to advise you of your rights," and I read him a form. I said to him, "You are hereby advised that you have a right to remain silent, and you don't have to say anything unless you choose to do so." I asked him, "Do you understand?" He said yes. I said, "Anything you do say may be used against you in a court of law. Do you understand this?" He stated yes. I said, "You have a right to have an attorney present with you during any questioning now or in the future. Do you have an attorney?" He stated no. I said, "If you can't afford an attorney the court will appoint one to ~~xxxxxx~~ represent you." I said, "If you don't have an attorney presently available, you have a right to remain silent until you have an

Spano - for People - direct
opportunity to consult one."

Q Is that very form, the very piece of paper
that you read to him ~~xxxxxxxx~~ on that, should I say in
those early morning hours at approximately 5 o'clock in
the morning? A Yes, sir.

MR. ALBLE_CHT: May I have that form offered as
People's Exhibit No. 8 in evidence.

THE COURT: Let's mark it deemed.

MR. DIRENZO: May I see it, please?

(Paper handed to Mr. Drenzo.)

MR. DIRENZO: If your Honor pleases, may I examine
on the voir dire?

THE COURT: Yes, surely. I won't mark it either
for identification or in evidence until such time as you
are finished. That's all.

MR. DIRENZO: He offered it in evidence. That is
the reason.

MR. ALBRECHT: You Honor, may I offer it for identi-
fication at this time, just for identification?

THE COURT: Mark it for identification.
Are you making the offer now in evidence too?

MR. ALBRECHT: No, I will make the offer at the
termination of my direct examination.

THE COURT: All right, 8 for identification, deemed.

HB7-7

Spano - for People - direct

(Police Department questionnaire form deemed marked

People's Exhibit 8 for identification.)

Q I show you Exhibit 8 for identification, Officer. You have examined that during the past several days previously, have youx not, that piece of paper?

A Yes sir.

Q Are there any errors or mistakes on that piece of ~~paper~~2 paper?

MR. DIRENZO: Objected to.

THE COURT: I will allow it. Overruled. I will let you inquire as to what he means by that.

MR. DIRENZO: Well, if I may on the legal problem, your Honor --

THE COURT: Yes.

MR. DIRENZO: Do I understand that he is using this paper to ~~z~~ refresh his recollection?

THE COURT: That's all.

MR. DIRENZO: Then if he is using the paper to refresh his recollection, this surely becomes an improper question.

THE COURT: I will allow it.

MR. DIRENZO: Respectfully except.

A In reading over this form, I see ~~xxxxxx~~ that the

Spano-for People - direct

time that I have given this interview, it says 1 A.M. but apparently was wrong because I received this complaint at 3:45 A.M. I apparently wanted to make it a 4:30 or a 5 A.M.

Q . Your best independent recollection at this time based on your own independent recollection, the time when you spoke to this man was some time around 4:30 or 5 A.M.; is that your testimony?

MR. DIRENZO: I object to the question on the ground that it's leading.

THE COURT: I will allow it; overruled.

Q Is that your testimony, Officer? A Yes, sir.

Q Now, Officer, after you said what you just described that you said, what did you say and what if anything did Walter Wolfrath say? A He stated that he accidentally shot himself, and the story he told us before about being shot was a lie.

Q That was with reference -- was that with reference to the story that he allegedly told Patrolman ~~Camera~~ Camera?--

MR. DIRENZO: That is objected to.

Q --And Patrolman Emburey?

MR. DIRENZO: Objected to, if your Honor please.

No proper foundation laid for asking the question. No

Spano - for People - direct
indication that he had personal knowledge of that.

THE COURT: I will allow it; overruled.

MR. DIRENZO: Respectfully except.

Q Is that correct? A Yes.

Q Did you have other conversations with him?

A Yes.

THE COURT: He didn't ask you what they were. Did
you have any conversation? The answer is either yes or
no.

THE WITNESS: I said yes.

THE COURT: All right.

Q Now, Officer, with regard to Exhibit 2, did you
have this in your possession at the time you were asking
these questions of him? A Yes.

Q Did you ask him about that weapon at that point
with regard to the accidental shooting in his arm?

A I asked him if he was shot in the arm with this
gun. He stated yes.

Q Is that referring to People's Exhibit 2? And
did he say he was holding that pistol at the time?

MR. DIRENZO: I object to the form of the question
at this time, if your Honor please, as leading.

MR. ALBRECHT: I will withdraw it.

Q What did he say? A He stated he acciden-
tally shot himself.

100-10

Spano - for People - direct

Q Now, Officer, after that conversation you just testified you had other conversations with him? A Yes.

Q What did you say to him, and what did he say to you, if anything? A He then after I questioned him he said to me, "Tehre is something else I have to tell you." I said, "What is it?" He said a couple of days ago --

MR. DIRENZO: Objected to, if your Honor pleases.

THE COURT: Overruled.

A He said a couple of days ago he did a stickup a couple of blocks from the Hotel Hilton. I asked him if he knew the exact location. He stated it was a couple of blocks from the Hotel Hilton.

MR. DIRENZO: If your Honor pleases --

THE COURT: Yes, sir?

MR. DIRENZO: Objection to it and now I move for a mistrial and withdrawal of a juror.

THE COURT: Overruled.

MR. DIRENZO: Respectfully except.

THE COURT: I mean the application is denied, rather.

A I asked him could he give a description of the location. He said it was a beauty salon. I said, "Could you give me an address?" He said, "I had to go up on an elevator."

Spano - for People - direct

Q Did he say who was there or describe any of that, how it happened or -- A He stated he went up there, and he stuck up a lady and a man.

Q Did he say whether he was armed or not or anything of that nature? A He had this gun with him. He was armed with this gun.

Q Referring to that gun? A Yes, sir.

Q And he said he had that gun with him? A Yes.

MR. ALBRECHT: Will you bear with me one moment, your Honor?

THE COURT: All right, I will bear with you.

Q Now, officer, at the time you questioned him, had you any knowledge whatsoever of a robbery or alleged robbery that took place at 130 West 57th Street, the Don-Lee Studios, Inc.? A No, sir.

Q Had you ~~xxxx~~ received any alarm? Were you put on notice by anybody about this? A No, sir.

Q By the way, Officer, when you spoke to him, did you smell any alcoholic beverages? A No, sir.

Q Was he responsive to your questions? A Yes, sir.

Q Was he alert? A Yes, sir.

Q Did you ever bring the Wyatts into the room with him? A From the door I let them look at him.

(Continued on next page.)

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Spano - for People - Direct

Q Now, did the acts and declarations which you have described impress you as rational or irrational?

MR. DIRENZO: I object to the form of the question.

THE COURT: Overruled.

A It was rational.

Q By the way, officer --

THE COURT: Answer that question.

Unless you want to withdraw it.

MR. ALBRECHT: I thought he said rational.

THE COURT: I didn't hear it.

THE WITNESS: I said rational.

Q Officer, thereafter, did you notify or cause to notify another precinct with regard to this matter?

A Yes, sir.

Q Did you ever talk, to your recollection, to Det. John Hanford personally over the phone? A I believe I spoke to him over the phone.

Q Do you recall when that was? A It must have been the following morning.

Q Are you certain of that? A I don't know if I got him immediately, or I left a message for him. I know/ eventually spoke to him.

Q You know you eventually spoke to him? A Yes, / sir.

Spano - for Pepple - Cross

MR. ALBRECHT: You may inquire, Mr. Durenzo.

CROSS-EXAMINATION

BY MR. DURENZO:

Q Det. Spano, did you testify before the grand jury in this case? A No, sir.

Q Did you make any reports or memos in connection with the incident that you have testified to in this case? A A few days ago I did.

Q I beg your pardon? A A few days ago.

Q Is it your testimony that a few days ago you made reports or memoranda in connection with this case? A I don't understand the question. Would you please repeat it?

Q I asked you whether you made any report or notation in connection with your investigation of this matter. A Yes, sir, right. Yes.

Q What reports did you make? A Well, I gave a respond on a U.F. 61.

Q U.F. 61, so the jury understands it --

THE COURT: Uniform Force 61.

MR. ALBRECHT: Your Honor?

THE COURT: Yes, sir.

MR. ALBRECHT: With the Court's permission, with

Exhibit 8 - People's Exhibit 8 - Cross - voir dire
Mr. Drenzo's permission, I forgot to make the offer
at the end of his testimony. Can I make the offer now?

Your Honor, I would offer, hereby offer at this
time into evidence, with the Court's permission, at
this time, Exhibit 8 which has heretofore been marked
for identification, and People's Exhibit 2 heretofore
marked for identification.

THE COURT: Do you want a voir dire on that?

MR. DRENZO: I want a voir dire.

First as to 8.

EXAMINATION ON THE VOIR DIRE

BY MR. DRENZO:

Q I show you People's Exhibit 8, marked for
identification, and I believe on direct examination you
stated that those were the questions you asked of the
defendant and those are the responses he made; correct?

A Yes, sir.

Q Did you record those answers contemporaneously
with the answers made to those questions by the defendant?

A Yes.

Q And that is what you meant when you told this
jury, "I advised him of his constitutional rights;" is
that correct? A Yes, sir.

Spano - People - voir dire

Q Are the responses contained and the answers true and accurate? A Yes, sir.

Q Incidentally, I questioned you only the other day concerning --

THE COURT: Are we going into cross-examination or are you going into a voir dire as to the document offered in evidence?

MR. DIRENZO: Your Honor is right. I forgot myself.

Q Would you be good enough to read the questions and answers as they are contained on People's Exhibit 8 for identification.

THE COURT: What has that got to do with the voir dire?

MR. DIRENZO: May I say it?

THE COURT: Yes.

MR. DIRENZO: To show that there was not in fact an advice pursuant to the rules enunciated in the Miranda case.

THE COURT: Is that the only reason for it?

MR. DIRENZO: I think --

THE COURT: I am going to sustain an objection by the district attorney on that.

MR. DIRENZO: Even though he hasn't made an objection?

Spano - For People - voir dire

THE COURT: He is standind up.

MR. ALERECHT: I was standing. I didn't want to interrupt you, sir.

THE COURT: I didn't ask him to stand up, Mr. Drenzo: He stood up.

Do you still object?

MR. DIRENZO: I do object.

THE COURT: Let me see the paper, please?

(Document handed to Court)

MR. DIRENZO: Is your Honor receiving both in evidence?

THE COURT: All we talked about was 8. Number 2 if you want a voir dire, I will give you that. I only do one thing at a time. It may be slower but it is the only way I can do it.

Your application insofar as inadmissibility of this paper is concerned is denied.

It is deemed marked 8 for identification in evidence.

(Document deemed marked People's Exhibit 8 for identification now received and deemed marked ~~People's~~ Exhibit 8 in evidence.)

XXXXX

THE COURT: Now we go into number 2.

Spano - for People - voir dire

MR. DIRENZO: I now object to the receipt of People's Exhibit 2 for identification in evidence on the ground that no proper foundation for the receipt of that in evidence in connection with this case has been received in evidence.

THE COURT: Overruled.

MR. DIRENZO: I respectfully except.

THE COURT: Mark it in evidence.

XXXXXX
(People's Exhibit 2 formerly marked for identification now received and marked People's Exhibit 2 in evidence.)

MR. ALBRECHT: Your Honor, may we show these exhibits to the jury?

THE COURT: Show 2 and 8 separately to the jury so they waste no time.

(Whereupon People's Exhibits 2 and 8 in evidence were shown to the jury.)

THE COURT: Mr. Reporter, will you physically mark it 8 in evidence.

Change your records, Mr. Rowe, please, instead of deemed marked, it is marked in evidence.

(People's Exhibit 8 deemed marked in evidence now marked People's Exhibit 8 in evidence.)

MR. ALBRECHT: Your Honor, may I ask with the Court's

Spano - For People - Direct - Cross

permission one question of the officer?

THE COURT: Ask Mr. Durenzo if you may interrupt him.

MR. DIRENZO: He may.

DIRECT EXAMINATION

BY MR. ALBRECHT:

Q Was the lieutenant or commanding officer of the squad present at the time you questioned Wolfrath?

A No.

THE COURT: Proceed, Mr. Durenzo.

CROSS-EXAMINATION

BY MR. DIRENZO (CONTINUED):

Q Tell me, Det. Spano, in connection with advising the defendant of his rights you say you read to him People's Exhibit 6 in evidence; correct?

THE COURT: 8.

Q 8. A Yes.

Q And, incidentally, did you make a record of the questions you put to the defendant and the answers he made to you in your memo book? A No, I did not.

Q You know, do you not, that under the police orders of the Police Department you are required to make such entries in your memo book? A You are asking me if I know that?

Spano - the People - Cross

Q Yes. A No, I don't.

Q Do you know it now?

MR. ALLEN: Objection, your Honor.

THE COURT: I will allow it.

Overruled.

MR. ALLEN: Because Mr. Durenzo -- I withdraw that, your Honor.

THE COURT: The questions in and of themselves, I will instruct the jury again, are not evidence in this case. It is the answer to questions which is the evidence.

Q Do you know it now? A If you are telling me and it is so, yes.

Q I asked you a simple question. A Yes.

Q Do you know it now? A Yes.

THE COURT: Is that specific you have to write in your memo book the fact that you advised the defendant of his rights? Do you know that now to be a regulation?

THE WITNESS: No, I don't.

THE COURT: All right, that is what he asked you.

Q Det. Spano, I questioned you the other day, did I not? A Yes.

Q Did I ask you to read Defendant's Exhibit B for identification?

Spano - for People - Cross

THE COURT: A. It may look like aB, Mr. Drenzo,
but it is A.

MR. DRENZO: I am talking about B.

THE COURT: B is something --

MR. DRENZO: Yes.

THE COURT: I am sorry.

Q Did I show you that? A No.

Q You never saw that? A Never saw it before
in my life.

MR. DRENZO: You are correct and I am in error.

Q Will you look at that now.

(Continued on following page)

Spano - People - Cross

THE COURT: Are you talking about this trial or a hearing?

MR. DIRENZO: The hearing.

THE COURT: No, then it is not. The hearing is separate and apart from this trial, sir.

If you are marking something for identification, we have it mark it here in this trial as an exhibit. Do not refer to an old exhibit number. You may have number 77, and put it in as Number C here. So let's have the record straight.

MR. ALBRECHT: Is that the Defendant's Exhibit A for Identification?

THE COURT: We'll mark it A for Identification, in this trial.

MR. ALBRECHT: Thank you.

THE COURT: Give it to the Reporter, please, so he can mark it. Defendant's Exhibit A for Identification.

(PHOTOSTATIC COPY OF "POLICE ORDER", ABOVE REFERRED TO, MARKED DEFENDANT'S EXHIBIT A FOR IDENTIFICATION.)

(The witness peruses Defendant's Exhibit A for Identification.)

THE COURT: All right. Did you read it, sir?

THE WITNESS: Yes, sir.

Spano - People - Cross

THE COURT: Now you may inquire.

Q. Commissioner's orders require that you have to make such an entry in your memorandum book?

MR. ALBRECHT: Objection. Is that a statement or a question?

THE COURT: It's a question.

A. According to this.xx

THE COURT: Let me ask you this question: --

MR. ALBRECHT: I will ask that the officer not say "according to this". That is not responsive to the question. I move to strike it out.

THE COURT: Sustained.

THE WITNESS: Is it an order to write in your memo book?

Q. Yes. A. If this is true, yes.

MR. ALBRECHT: I move to strike out that answer. I don't know what he is referring to there.

THE COURT: He is referring to Defendant's Exhibit A for Identification.

MR. ALBRECHT: But it is not in evidence.

MR. DIRENZO: I will offer it in evidence.

THE COURT: The question directed to Mr. Spano --

MR. ALBRECHT: The question is clear, your Honor.

Spano - People - Cross

THE COURT: He gave him Defendant's Exhibit A for identification to look at.

MR. ALBRECHT: Right.

THE COURT: And his answer is: if this is an order -- for identification-- this is Defendant's Exhibit A ~~showing~~ -- then the answer is "yesx". Now it is up to Mr. Durenzo to establish that particular thing via Police Department regulations or orders: very simple.

Q. How long have you been a detective? A. Fifteen years.

Q. Is it your testimony now that you do not know of a requirement that was placed upon all members of the Police Department on or before April 4, 1966 which directed and required all police officers, by Commissioner Leary, to make these entries concerning the advising of the defendant's rights in your memo book? A. I did not know it.

Q. And you don't know it today? A. I don't know it today.

Q. On November 5th was there ~~any~~ a requirement, to your knowledge, back on November 5, 1966, requiring you to advise ~~in~~ a defendant of his Constitutional rights?

MR. ALBRECHT: Objection.

Spano - People - Cross

THE COURT: I will sustain the objection as to form, because you have got to ask him who required him to do that.

Q. Back on November 5, 1966 was there any requirement, to your knowledge, that a defendant had to be advised of his Constitutional rights, under the rule enunciated in the Miranda case?

MR. ALBRECHT: Objection. This is not a lawyer.

THE COURT: I will allow it. If he knows. Overruled.

A. Yes.

Q. Did you read Judge Warren's opinion?

MR. ALBRECHT: Objection, your Honor.

THE COURT: I will allow it. Overruled.

A. Did I read it? No, I did not.

Q. Well, I have a form there. And I believe it's People's Exhibit 3 in evidence--

THE COURT: No, it is not. It is just for identification.

MR. ALBRECHT: No, it is in evidence. I offered it in evidence.

THE COURT: You offered it in evidence?

MR. ALBRECHT: Yes.

THE COURT: If you offered it in evidence, then it would be 3. -- You said "3" or "A"? Please enunciate

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distinctly.

MR. DIPENZO: You are taking advantage of me because of my dentures.

THE COURT: That is what you told the jury the last time -- I'm sorry.

8 is in evidence. I thought he was referring to "A".

MR. DIPENZO: May I ask the Reporter to tell me what my last question was, please?

(The last two questions and answers were read as recorded.)

Q. Now, you had that form with you when you spoke to the defendant? A. Yes.

Q. And on November 5th it was a requirement that you had to get answers to the questions that were on People's Exhibit 8. Is that correct? A. Yes, sir.

Q. So that you had the printed form with you at that time? A. Yes, sir.

Q. And you were to take no statement from a defendant unless he made answers to each of those questions. Correct? A. Yes, sir.

Q. Will you read question number one, and give the answer?

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MR. ALBRECHT: Your Honor, the item speaks for itself. Do we have to have him read it?

THE COURT: Yes, sir. I will sustain that objection. The paper speaks for itself.

MR. DIRENZO: All right.

Q. Do you have an answer to Question Number One?

A. Yes, sir.

Q. Do you have an answer to Question Number Two?

A. Yes.

Q. Do you have an answer to Question Number Three?

A. Yes.

Q. Do you have an answer to Question Number Four?

A. No.

Q. What was Question Number Four? A. "If you cannot afford an attorney, the Court will appoint one to represent you".

Q. And he made no answer to that question?

A. I don't believe this is a question.

Q. Do you have a response -- an answer -- to it?

A. There is no answer.

Q. Go to Question Number Five. Will you read it, please?

MR. ALBRECHT: Your Honor, I am going to object to

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him pointing his finger and yelling at this police officer. I don't think it is necessary.

THE COURT: I don't think he is yelling.

MR. DIRENZO: Your Honor, must I change my habits after thirty years?

THE COURT: You may have to. The fact that you have a habit doesn't make it all right.

MR. DIRENZO: I can't put my hands in my pockets.

THE COURT: But you have to do it --

MR. DIRENZO: I have occasion, only by way of being expressive, to use my hands. If I had them behind my back, I can't talk.

THE COURT: I am allowing you to do that. The fact that the District Attorney is making an objection is of no moment to the Court. Similarly, if you make an objection, at times it is of no moment to the Court.

Go ahead.

A. There is no answer.

Q. What was the question? A. Number Five?

Q. Yes. A. "If you do not have an attorney presently available, you have a right to remain silent until you have an opportunity to consult with one."

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Q. And there is no answer to that question?

MR. ALBRECHT: Objection to the characterization of that as a question, your Honor.

MR. DIRENCO: It is a statement.

THE COURT: I will allow it. Overruled.

Now you are testifying, Mr. Diranzo.

Q. Was there a sixth? A. There is no other questions. There is a "6", but it states: "Investigation conducted by Detective Spano, Shield Number 1395, 10th Detective Squad."

Q. Did you ask the defendant this question: "Now that I have advised you of your rights, are you willing to answer questions without an attorney being present? Do you understand?" A. No, it is not on here.

Q. You did not ask him that question? A. No.

MR. DIRENCO: If your Honor please, at this time I move to strike out all of the admissions allegedly made by this defendant on the ground that there was a failure of compliance with the requirements enunciated in the Miranda case.

THE COURT: What was the last question?

(The last two questions and answers were read as recorded.)

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THE COURT: I am going to exclude the jury, and we will have a discussion as to the law.

Gentlemen of the Jury: the law is the problem of the Court, with which you have no concern. You are the sole and supreme judges of the facts. I cannot encroach upon your territory, which is the determination of the facts., The determination of the law is the province of the Court, and you can't ~~en~~ encroach upon that.

So the Court is going to discuss law with counsel for the defendants.

You are admonished not to discuss this case amongst yourselves, not to permit anyone to discuss the case with you, and not to come to any conclusions concerning the case until it is finally submitted to the jury for their determination.

You are now excused from the courtroom.

(Thereupon, the jurors and alternate jurors retired to the jury room, and the following proceedings were had out of their presence and hearing:)

All right, Mr. Albrecht, do you want to answer that?

MR. ALBRECHT: Your Honor, I don't know what Mr. Durenzo read from. I don't know what slip of paper from

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the Law Journal he is reading; whether he is quoting Mr. Finkelstein, or he is quoting --

THE COURT: Who is Mr. Finkelstein?

MR. ALBRECHT: The publisher of the Law Journal.

Q -- or he is quoting Mr. Leary, who is our Commissioner, or he is quoting the Supreme Court of the United States.

All I know is we had a full and complete hearing on this question before your Honor, and I relied on your Honor's ruling in making the offer. This is the exact, same document which the officer read from before, your Honor. There was a ruling in this case. The law of this case is that there was a sufficient warning, it was voluntary.

THE COURT: Statements made to Detective --

MR. ALBRECHT: -- Spano and Hanford.

THE COURT: -- Hanford --

MR. ALBRECHT: And Spano. I have the minutes right here. Spano testified before your Honor.

THE COURT: All right. The statement to be elicited on this trial with a statement made by the defendant to Detective Hanford --

MR. ALBRECHT: --and Spano. I have here the record

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where in the course of the hearing Detective Spano testified before your Honor --

THE COURT: I understand that. That question was not answered. And so that question wasn't raised, so far as I am concerned.

MR. ALBRECHT: What? I don't understand that, your Honor.

THE COURT: He didn't ask him that question.

MR. ALBRECHT: I didn't ask him that question?

THE COURT: Mr. Dierenzo didn't ask him the question.

MR. ALBRECHT: At that time?

THE COURT: At that time.

MR. ALBRECHT: But we are ruling on the question of law, of what he testified to.

All right; that is my position, your Honor. I'm sorry -- that's our position. The record speaks for itself: that's all I can say. I can't change the sworn testimony.

THE COURT: I have to rule on a question of law now.

MR. ALBRECHT: The only question of law that the People submit to you is that the People have unqualifiedly complied with the requirements of Miranda, and that the facts and evidence before your Honor indicated, as you so

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ruled the other day, that the waiver was voluntary, knowledgeable, and that the --

THE COURT: Let me ask you this question, Mr. Albrecht: Supposing, on the Huntley hearing, -- the Miranda hearing -- whatever you want to call it -- that the defendant did not elicit from the People's witnesses sufficient evidence to overcome the People's burden of proving the voluntariness of the defendant's statements beyond a reasonable doubt, is it your position that thereafter, during the course of the trial, certain information is obtainable by the defendant, that he cannot again raise the issue of voluntariness by showing at this time that what appeared to be sufficient warning advising the defendant ~~exercise~~ of his rights did not take place? That he is foreclosed from doing that because of the hearing? Is ~~x~~ that what your position is?

MR. ALBRECHT: Let me just state this, your Honor: Assume -- first of all, that is not the case in this particular case. --

THE COURT: I am asking you a question. Now, you answer that.

MR. ALBRECHT: Certainly not, your Honor. If subsequent

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MR. ALBRECHT: -- and to the Court, which warrants the reopening of the hearing. I certainly think that the law would give inherently the Court the power to do that; in all fairness that should be done.

THE COURT: All right.

MR. ALBRECHT: I am not saying that that should not be done. I am just saying --

THE COURT: What we are going to do now, sir, is to reopen the Miranda hearing, outside the hearing of the jury, and we will go into whether or not there was sufficient notice given to the defendant that his rights --

MR. ALBRECHT: I am just --

THE COURT: Wait a minute; let me finish, sir. -- whether or not at that time after having been given notice of his rights ~~was~~ in any knowledgable way.

MR. ALBRECHT: Your Honor, I am submitting to your Honor most respectfully that there is not one scintilla of new evidence which Mr. Dierenzo produced to this Court, and I am not talking about a question, I am talking about new evidence. I am not talking about a question of law which was before the ~~same~~ Court before. I am talking about evidence which I submit to your Honor warrants this Court in reopening this matter, because may I ask --

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THE COURT: He has asked this witness this question, Mr. Albrecht: "Did you advise this defendant that he had a right to remain silent --" what was the last question again?

(The last question was read.)

THE COURT: There is no testimony insofar as Detective Spano is concerned, of advising this defendant that now that he had been advised of all his rights, what his desires were, does he want an attorney.

MR. ALBRECHT: Your Honor, that was before your Honor the last time. That was precisely the evidence that was before your Honor. Your Honor had this piece of paper, this record so indicated ~~indix~~ exactly what was before your Honor at that time.

THE COURT: Let me see it again.

MR. ALBRECHT: I am put into a position now wherein your Honor, if granting the defendant's motion, will be in a position to have to grant possibly a mistrial in granting the defendant's motion, because he asked this question. Now, this is exactly what Huntley was designed ~~to~~ to avoid, to have the question determined by the Court.

THE COURT: Would you rather that you proceed throughout the entire trial and then may have this reversed because of error committed by this Court at this stage?

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MR. ALBRECHT: There was no error committed by this Court, your Honor.

MR. DIRENZO: May I be heard, your Honor?

THE COURT: Yes.

MR. DIRENZO: Two points. Number one: Mr. Albrecht made reference to --

THE COURT: I don't hear you.

MR. DIRENZO: Mr. Albrecht made reference to the fact that I was reading from some paper. He didn't know whether it was authentic or maybe it wasn't authentic. With reference to that specific question, that is a question that was set forth in the Miranda case, so that I say that that question in and of itself constitutes a question of law. We don't have to guess about it. It is the law or it's not the law. With ~~refere~~ reference to his second point, I would like to point out that one of the specific objections that I made was that with reference to this particular paper, People's 8 in evidence no., I argued that there was not compliance because, number one, it would have to be knowledgable, and there would have to be answers to those ~~specific~~ specific questions to which we had none, and that is one of the very arguments I made to your Honor at the hearing.

MR. ALBRECHT: I am glad Mr. Drenzo noted that he

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made the exact argument before and there was a determination and a ruling by this Court on that argument.

THE COURT: All right, the objection is now overruled.

MR. DIRENZO: You know, even courts make mistakes sometime.

THE COURT: Allright, I am going to overrule that objection. That was the argument he ad made at that time. All right, bring the jury back.

(The jury returned to the courtroom.)

THE CLERK: People of the State of New York against Walter Wolfrath. Defendant is present; his attorney, Mr. Drenzo, is present; Mr. Albrecht, the assistant District Attorney, is present.

(The clerk called the names of the jurors and alternate jurors.)

THE CLERK: All jurors present.

DETECTIVE LEONARD D. SPANO,
* having been previously sworn, testified further as follows:

THE COURT: All right, proceed.

MR. DIRENZO: At this time, if your Honor please, I have no further questions of this witness, and I'd like to make an application at this time.

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THE COURT: All right, have you any redirect?

MR. ALBRECHT: Certainly not, your Honor.

THE COURT: He is finished with his cross.

MR. ALBRECHT: I am finished with the direct.

THE COURT: All right. Do you want a side bar?

MR. DIRENZO: Yes.

THE COURT: Step up.

(The following occurred at the side bar out of the hearing of the jury:)

MR. DIRENZO: If your Honor pleases, at this time, predicted upon noncompliance with the requirements of People vs. Miranda or Miranda vs. Arizona, I ~~move~~ move the declaration of a mistrial and withdrawal of a juror.

THE COURT: Application is denied; exception to the defendant.

(The side bar conference ended, and the following occurred in the hearing of the jury:)

~~xxxxx~~ MR. ALBRECHT: Detective Hanford, please.

Your Honor, prior to Detective Hanford taking the stand, may I approach the bench with Mr. Direnzo?

THE COURT: Yes.

(The following occurred at the bench out of the hearing of the jury:)

MR. ALBRECHT: I would like to know at this time, if I

and if the jurors at any time feel that they want to make any measurements against the chart a ruler would be available to them. Unless we stipulated that --

MR. ALBRECHT: That was going to be my next offer, Mr. Direnzo. Thank you.

MR. DIRENZO: So that it is available to the jurors if they require it.

THE COURT: For identification or in evidence?

MR. DIRENZO: In evidence.

THE COURT: All right.

(CHART and RULER received in evidence and marked People's Exhibit 1)

M A R I O N E V E L Y N S E H N E R T, residing
at 10 Stuyvesant Oval, New York, New York, called
as a witness by the People, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. ALBRECHT:

Q Mrs. Sehnert, are you married? A Yes, sir.

Q Your husband's name is what, may I ask?

A Don Sehnert.

Q Are you in business as Don-Lee Studios, Inc.
at 130 West 57th Street in New York County? A Yes, sir.

Q For how long have you been in business at

Q For how long have you been in business at that location? A Approximately 22 years.

Q Mrs. Sehnert, I direct your attention to Exhibit 1, which is behind you to the left. You have seen that chart before in my office, have you not? A Yes.

Q Is that a fair and accurate representation of your premises as it was on November 2, 1966? A Yes, sir.

Q I am referring to 130 West 57th Street, apartment 10-B, I believe, is it not? A Yes, sir.

Q Or studio 10-B. On November 2—

THE COURT: Apartment 10 what?

MR. ALBRECHT: B as in boy, your Honor.

THE COURT: All right.

Q On November 2, 1966, did you go to work, and were you working at 130 West 57th Street in your studios

A Yes, sir.

Q And at approximately eight o'clock in the evening did something happen? A Yes, sir.

Q Who was in the studio at that time? A My husband, my son, myself and three of our clients.

Q Were were you in the studio when the event first took place? A I was in my office.

Q May we wheel this up a little closer, please?

Is your office right over here? A Yes, sir.

THE COURT: Indicating?

MR. ALBRECHT: Indicating the word "office"

THE COURT: The record does not show where you are pointing. You have to say to what you are pointing.

Q Is this the entrance to your premises, indicating 10 B? A Yes, sir.

THE COURT: On Exhibit 1.

Mr. Albrecht: On exhibit 1.

Q In your office is there a window that looks out into the hall? A There is an opening; no glass.

Q I see. Is that where I am pointing, at a partition between the office and the hall? A Yes, sir.

Q How big is that opening, approximately? A I can't tell you.

Q Show us with your hands. A Approximately as wide as this and perhaps this tall.

THE COURT: Estimating, Mr. Drenzo?

MR. ALBRECHT: Three feet by three feet.

MR. DRENZO: She has short arms. Did you see it? What is your estimate?

MR. ALBRECHT: Three by three, approximately.

MR. DRENZO: I will take your estimate.

THE COURT: All right.

MR. ALBRECHT: Thank you, Mr. Direnzo.

THE COURT: Do you have short arms, too?

MR. DIRENZO: He has long arms.

Q Where was your husband, to your knowledge?

A My husband was in what we call the women's work-room.

THE COURT: Stand down, Marion, and show it to us on the chart.

THE WITNESS: My husband was right in here.

THE COURT: Indicating, please.

MR. ALBRECHT: The first booth in the series of rooms called the women's room, the first booth in the right.

MR. DIRENZO: On the east side.

Q Where were the other people?

THE COURT: You are talking about the three customers?

Q If you know?

THE COURT: Clients.

THE WITNESS: One of our customers was in the wash room.

Q Indicating the washroom. A Locked in. One of our customers and my son was in what we call the men's work room.

Q I see. Indicating the men's work room. Where was Mr. Greenwald, if you know? A Mr. Greenwald had

been in the men's work room.

Q You can take your seat now, Mrs. Sehnert. You say that something happened. Will you tell the jury what happened about 8 o'clock in the evening? A A man burst through the door coming from the outside hall into the inside wall with great force.

Q Is that where it says 10-B; is that the door you are referring to, indicating 10-B on the chart?

A Yes, sir.

Q All right. Was that door closed prior to the time you say he burst through? A Yes, sir.

Q You heard a loud bang or something of that nature? A Yes, sir.

Q What happened then? A When he got into the inner hall and in front of the window, without the glass that was in front of me, he stood straddled and pointed a gun at me and said: Don-Lee Studios, this is a stick up. I don't want to hurt you, but I will kill you if I have to.

Q Approximately how far were you from this man at that point? Can you estimate with myself? Would you tell me to come closer or move back? A Please come closer.

MR. ALBRECHT: Can we stipulate approximately 8 feet

Mr. Direnzo?

MR. DIRENZO: Good enough.

Q Could you see his face? A Yes, sir.

Q Was there any lighting at that point? A Yes, sir, directly above him.

Q Had you seen him before, may I ask? A No, sir.

Q How was he attired, if you recall? A He had a dark suit on, a light shirt, a tie, a dark raincoat and was wearing glasses.

Q What did you do and what did he do at that point, if anything? A I told him that we would do whatever he wanted to if he wouldn't harm anybody, and I also - he asked me then if there was anybody there, and I told him yes, and told him that my husband was there and my son and the would be ~~exit~~ coming out of different rooms. I asked him if he would let me call my husband and explain to him and not to hurt anybody and he said yes.

I did call my husband from the room indicated as the women's work room because my husband couldn't see him. We have louvre doors that swing. I explained to this gentleman that my husband would be coming from in back of him, and I called my husband out and as he came out I explained to him that we were being held up and

please not to make any move.

Q Did you see the gun in his hand at that time?

A Yes, sir.

Q Would you describe the gun that you saw, if you can? A It was sort of a blue metallic color. It was a very short gun.

Q When you say "short" are you referring to the barrel that sticks out in front of the cylinder. In other words, are you referring to the end of the gun, the barrel? A Yes,

Q In other words, it was short? A That is right, sir.

MR. ALBRECHT: May I have a court officer, please?

May the record indicate that I am opening a Property Clerk's Voucher 66 M 27116.

THE COURT: The record will so indicate.

Q Will you show that ~~an~~ object to the witness, Officers.

THE COURT: First mark it No. 2 for identification.
(GUN marked for identification as People's Exhibit 2)

(continued on next page)

M. Sehnert - for People - direct

Q I ask you if you recognize that object, People's Exhibit 2 for identification. A It's the same type of gun. It looks like it.

Q Did your husband and other people come out into the hall? A Yes, sir. Before I had called my husband out into the hall, Don Greenwald had come out from what we ~~xxxxxxx~~ we call the men's work room. My son had been working on him. He came out and this man who had the gun told Mr. Greenwald to line up against a door in my office.

Q Would you please indicate with this pointer where these people lined up? A Mr. Greenwald came out of here (indicating).

Q Indicating the men's room in to the hall? A Into this hall (indicating) over here, and he had him come and lineup against a door that ~~xxx~~ is here, that goes into our laboratory.

Q Was that door closed at the time? A Yes, it was.

Q And he was facing that wall? A Yes, sir.

Q Then what? A When my husband came out of the women's work room --

Q Indicating the women's room. A Back of

M. Schnert - for People - direct
him, and he told him to come in to here, also to line up
by the side of Mr. Greenwald, into my office also here
(indicating).

Q Then what? A At that time my husband lined
up but there is a mirror on this wall ~~xxxx~~ in my office.

Q Indicating the wall where there is a mirror.

A Quite a large mirror. And my husband was told by
this man to get away from the mirror and to move over and
line up in front of the door where Mr. Greenwald was.

Q In other words, the mirror was right in front
of his face? A That's right.

Q Where was your son, by ~~the~~ the way? Did your son
come into the office as well? A Yes, my son was in
the men's room, and he came out and as he came out, I said,
"Ron, we are being held up. Please don't do anything.
Do what this man asks you to do." And the man also told
him to come in and to line up against the wall where my
husband and Mr. Greenwald was.

Q During this time this man ~~xxx~~ was in the hall
and asking these people to come into the office; is that
correct? A Yes, sir.

Q Then what did he do after everybody was in the
office, if you recall? A He came round the door

M. Sehnert - for People - direct
into my office.

Q He came into the room where everybody else was?

A Yes, sir.

Q When he came into the room, did he walk past you?

A No, sir.

Q Did he come closer to you in any way, manner, shape, or form? A Yes, sir, he did.

Q How close did he come to you when he came into the room? I will walk again towards you, and you tell me when to stop. A Well, He came within, I would say, two or three feet of me.

Q And were you looking at his face at that time?

A Yes, sir.

Q Was there light on in the offices well?

A Yes, sir.

Q Now that everybody is in the office, he is in the office as well; is that correct? A Yes, sir.

Q Did he have the gun in his hand still? A Yes, sir.

Q What happened then? A He went through some of the desk drawers, and when he didn't find anything, he asked all of us for money.

Q Then what happened? A He took money from Mr. Greenwald.

Mr. Sehnert - for People - direct

Q Did he see Mr. Greenwald hand him money?

A Yes, sir.

Q And did you see bills or change? A They were bills, quite a number of them.

Q Now everybody was against the wall but you; you were not against the wall? A No, sir.

Q And then what happened? A And he asked, as I say, he asked everybody for money. My husband gave him money out of his ~~box~~ pockets, which were also bills; my son gave him money which was only change. That's all he had in his pocket. And he asked me for money, and my purse was on the floor by the side of my desk, and I explained this to him, that it was in my purse, and asked him if I could reach for my purse, and he told me yes. I reached for my purse, and he started to take it. He was in the office with me, and I asked him if I could keep my purse, and give him the money, and he said yes, I could, and when I took my wallet out he was going to take the wallet and I asked him if I could have the papers out of my wallet; and he said I could keep my wallet and just give him the money, which I did, and handed it to him.

Q Approximately how much money did you give him?

A I had approximately \$60 in my purse.

M. Sehnert - for People - direct

Q Did you give that \$50 to him? A Yes, sir.

Q At that point he still had the gun in his hand?

A Yes, sir.

Q Then what happened? A He took the phone from my desk, which has rather a long cord on it, and tried to pull it out of the wall, and it was quite difficult, and he couldn't, so he tried to break the phone; and I asked him not to, that we couldn't do business without the phone; so he said he wouldn't, and if we would promise not to call the police immediately, and he took the phone with the long extension and put it out into the inner hall, set it on the floor.

Q Then what happened? A He asked my husband for a key to the door which goes into the outer hall, and my husband took it off of the key ring and gave it to him.

Q Then what did he do? A He went out into the outer hall and locked the door from the outside.

Q Could you hear it click? A Yes, sir.

Q Then what happened? A My husband started toward the phone, and I told him, "Don't go near that phone."

MR. DIRENZO: Objected to.

M. Sehnert - for People - direct

THE COURT: Sustained. The jury is instructed to disregard it.

Q Then what happened? Then tell them about --

THE COURT. The reason why, ladies and gentlemen, members of the jury, I sustained the objection, is because the Court feels as a matter of law the question is an ~~impr~~ improper one, and we have to go by the rules of evidence. All right. xx

Q Don't tell the jury what you told your husband. What happened then? A Within just a few seconds the door to the outer hall was unlocked, and this man came back in and went out again and relocked the door.

Q Did he say anything when he came back the second time? A "Don't touch that phone."

Q Did he have a gun in his hand? A Yes, sir.

Q Approximately how much time from the time he came into the premises till the time he left, how much time did the whole thing take approximately? A I would say about eight minutes, sir.

Q And during that eight minutes, how much time during that eight minutes did you have an opportunity to look at the defendant's face? A I would say between six and seven minutes.

M. Sehnert - for People - direct

Q I want you to look around this courtroom, and I ask you if you see the man who did these acts which you allege or you just testified to. Stand up, please. A Yes.

Q Would you please point to him, if you see him?

A This gentleman (indicating).

Q Would you describe what the gentleman you pointed to is wearing at the present time?

MR. DIRENZO: Let the record show she is identifying the defendant who is sitting at the defense table.

THE COURT: All right, sit down.

MR. ALBRECHT: Your Honor, may I ask the defendant to rise?

MR. DIRENZO: Rise. (The defendant arose.)

Q I want you to take a good look at him now, Mrs. Sehnert. Are you sure that that is the man? Don't look at me. Look at him. Are you sure that that is the man who did the acts that you allege? A I am absolutely positive, sir.

Q Mrs. Sehnert, during the period when you observed him in your premises, did he stagger? A No, sir.

Q Did you smell any alcohol on his breath?

A No, sir.

THE COURT: Keep your voice up, please.

M. Stahlert - for People - direct

A No, sir.

Q Did he act as though he was intoxicated? A No, sir.

Q Were you able to form an opinion as to whether or not the acts of the defendant which you just testified to are the acts of somebody who was rational?

MR. DIRENZO: Object.

MR. ALBRECHT: I will withdraw that.

Q Are you able to form an opinion whether or not the acts of the defendant impressed you as being rational or irrational?

MR. DIRENZO: Object, objected to.

THE COURT: I will sustain that. She's got to be qualified as an expert.

MR. ALBRECHT: No, Your Honor, there are cases on that your Honor.

THE COURT: All right, when you give me the cases, I will read them.

MR. ALBRECHT: May I approach the bench with counsel?

THE COURT: Surely.

(Discussion off the record at the bench between the Court, Mr. Drenzo, Mr. Coiro, and Mr. Albrecht.)

Q Did the defendant in your opinion act in an irrational fashion?

MR. DIRENZO: Objected to.

M. Schnert - for People - direct

THE COURT: I will allow it.

MR. DIRENZO: Respectfully except.

A I am sorry.

Q Did the defendant act ~~irr~~ irrational? A No, sir.

Q Did there come a time on the following Sunday, November 6, 1966, when you and your husband met with a detective John Hanford?

THE COURT: What date was that, November what?

MR. ALBRECHT: November 6, 1966.

THE COURT: November 6th, all right.

Q A Sunday. Did you meet with Detective John Hanford? A Yes, sir.

Q Where did you meet? A Bellevue Hospital.

Q Did you go into the hospital with the detective?

A Yes, sir.

Q Did you go up on a particular floor with the detective? A Yes, sir.

Q By the way, do you know a man or do you know the name Robert Wyatt? A Yes, sir.

Q Where did you know that name from?

MR. DIRENZO: Objected to, if your Honor please, and with reference to this inquiry, will the record indicate that I am making the same motion for a mistrial that I made predicated on the District Attorney's opening and for

M. Sehnert - for People - direct

the reasons and the grounds stated at that time. I repeat and reiterate them with the same full force and effect as if set forth in detail herein right now.

THE COURT: Your application is denied.

MR. DIRENZO: Respectfully except.

THE COURT: You may have an exception.

Q Where do you know that name from, Mrs. Sehnert, please? A He was a former employee at our place of business.

Q On November 2, 1966 was he --

THE COURT: What was his first name?

MR. ALBRECHT: Robert, your Honor.

THE COURT: Robert Wyatt?

Q On November 2nd, was he employed in your premises, the day this happened? No, sir.

Q Had his employment been terminated prior to that date? A Yes sir.

Q Had he been in your employ in 1966? A Yes, sir.

MR. DIRENZO: If your Honor please, may I have a standing objection to this entire line of testimony?

THE COURT: He is stopping now. You may have --

MR. DIRENZO: Without renewing --

MR. ALBRECHT: I have no further questions.

M. Sehnert - for People - Cross
in uniform, was there not? A Yes, sir.

Q Where was the defendant? A He was out
in the hall.

Q Walking around? A No, sir.

Q Tell us where he was. A He was in a
wheelchair.

Q His arm in a cast? A I don't know. I
didn't notice.

Q See if I can refresh your recollection. Is
it your testimony that you don't know if the defendant's
arm was in a cast? A That's correct, I don't know.

Q Well, can you tell the jury whether the left
whether it
arm/was in a cast or not was in an upright position?

A I didn't see his arm, I didn't look at it, I don't
know whether it was in any kind of a cast or not.

Q I just ask you this question, you saw the
defendant in a wheelchair? A That's right.

Q In a hospital? A That's right.

Q I am only asking you one question. You did
see the defendant, didn't you? A Yes, sir.

Q Did you see the defendant with his left arm
in a cast in an upright position as I am describing to
this jury? A No, sir, I did not.

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M. Sehnert - for People - Cross

Q Would you say you did not see it that way?

A No, I did not see it.

THE COURT: Would you say you did not see it, that is what he is asking you, or don't you recall what was the condition of the defendant at that time?

THE WITNESS: I didn't see it, I don't know what the condition was of the man at that time.

Q Well, would you say his arm was not in an upright position, can you answer that question for me, please?

A I do not know if it was in an upright position.

Q You can't tell us whether it was in a cast and you can't tell us if it was in an upright position?

A No, I cannot.

Q But there was a uniformed police officer?

A Yes, sir.

Q And there was Detective Hanford? A Yes, sir.

Q Did you pay any attention to what was going on between Detective Hanford and the defendant and the police officer, if anything was going on?

A No, sir, I did not.

Q Between the time that you first saw the defendant in the hospital in that wheelchair and the time

M. Schnert - for People - Cross

that you actually approached the defendant, how much time would you say elapsed?

THE COURT: Do you understand the question? If you don't, say so. If you do, answer it.

A I don't understand. You mean the time -- from the time that I actually went over and looked at him? In other words, you are asking me how long did I look at him?

Q I will withdraw the question and put this question to you. Tell me, between the time that you first saw the defendant, how much time elapsed before you actually approached the defendant?

THE COURT: Do you understand that?

THE WITNESS: Yes. Yes, I do.

THE COURT: All right, answer it.

THE WITNESS: All right. I would say perhaps three minutes. We didn't go directly over to him.

Q Was that question put to you the other day?

A I don't know.

Q That same question? A I don't know.

(Continued on next page).

M. Sehnert - for People - redirect
pointed to the petit jury.

THE COURT: To the petit jury, that is right.

Q You testified, I believe, that I met you in your office about a week and ahalf ago or thereabouts?

A Yes, sir.

Q Was that the first time you had ever seen me face to face? A Yes, sir.

Q How many times thereafter before we started this trial did you see me? A One other time.

Q I believe, if you recall, when I had you on direct, when I was questioning you yesterday, I asked you whether you had gone to the hospital with the detectives on November 6th, the Sunday; is that correct? A Yes, sr.

Q And I didn't ask anything after that; Mr. Direnzo then asked on crossexamination, "Did you see the defendant there?" and you said, "Yes;" is that correct? A Yes.

Q Now, at that time before you saw the defendant had any detective, any District Attorney, anybody told you that the defendant was the man who committed this crime?

A No, sir.

Q Did anybody tell you that the defendant had confessed in any way to this crime? A No, sir.

Q Did you come into the defendant's presence on

Mr. Sehnert - for People - redirect
-recross

November 6th, that Sunday, with Detective Hanford and
your husband? A Yes, sir.

Q Did the defendant, Walter Wolfrath say anything
that you heard?

MR. ~~EXEN~~ DIRENZO: Objected to.

THE COURT: Overruled.

MR. DIRENZO: Respectfully except.

THE COURT: You are talking about at the hospital?

MR. ALBRECHT: The hospital.

THE WITNESS: I answer; is that correct?

THE COURT: Yes, you may answer, Mrs. Sehnert.

A Yes, he did say something.

Q What did he say, if you recall? A He
said, "I did it."

Q Do you know what type of shoes the defendant
was wearing at the time when you say he robbed ~~u~~ you on
November 2nd? A No, sir, I do not.

MR. ALBRECHT: No questions.

RECROSS EXAMINATION BY MR. DIRENZO:

Q Mrs. Sehnert, when I asked you ~~a~~ a question about
your appearance before a grand jury -- A Yes, sir.

Q -- is it your testimony that you misunderstood
me and you meant this jury, this petit jury? A This

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Sehnert - People - recross

THE COURT: It might have been some other time, a couple of minutes ago.

MR. DIRENZO: All right.

Q Tell me, what did you say when you went to the hospital and you saw the defendant in a wheelchair?

A I said "That is him."

Q That is all you said; is that correct?

A That's right.

Q You said "That is him"? A That's right.

Q Indicating the defendant seated at this table, right? A Yes, sir.

Q There was no talk about the robbery at this point? A No, sir.

Q No talk about a robbery on November 2d, 1966, correct? A Right.

Q No talk about a robbery at the Don-Leez Studio on 57th Street? A That's right.

Q No talk about a stick up? A That is right.

Q No talk about the amount of money allegedly taken, correct? A Correct.

Q And the defendant looked at you and said "I did it"?

MR. ALBRECHN: Objection. That was not the testimony.

proceedings

recess.

MR. ALBRECHT: Thank you.

THE COURT: It will take two minutes for me to admonish the jury and send them out.

The jury is admonished not to discuss the case among yourselves or permit anyone to discuss the case with you; and not to come to any conclusions about this case until it is finally submitted to you. We will take a brief recess.

(A five-minute recess was taken, after which the jury reentered the courtroom.)

THE CLERK: People of the State of New York against Walter Wolfrath. The defendant is present; his attorney, Mr. ~~Eizen~~ Dierenzo, is present; the Assistant District Attorney, ~~is~~ Mr. Albrecht, is present.

(The clerk called the names of the jurors and alternate jurors.)

THE CLERK: All present.

MR. ALBRECHT: Mr. Sehnert.

~~xxxxxx~~ D O N S E H N E R T , 10 Stuyvesant Oval,
New York, N.Y., called as a witness in behalf of the People,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALBRECHT:

Q Mr. Sehnert, are you the husband of ~~XXXXXX~~

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D. Sehnert - for People - direct

Marion Sehnert? A Yes.

Q And do you have ~~in~~ an interest in or did you own on November 2, ~~122~~ 1966 the Don-Lee Studios, Inc. located at 130 West 57 Street, Apartment No. 10B?

A That's right.

THE COURT: Did you say apartment or suite?

MR. ALBRECHT: Suite or Apartment 10B.

THE COURT: 130 West 57th Street.

Q Mr. Sehnert, on November 2, 1966, if you recall it was a Wednesday, were you working late that evening in the vicinity of 8 o'clock in the evening? A Yes.

Q Did there come a time when something happened?

A Yes.

Q Would you tell the jury what happened? A I was in one of the back rooms with a customer, and I heard my wife out in the office, heard some little bit of commotion, but there is always commotion around; so I heard my wife out in the office call, "Don, come here. Don, come here." So I stepped -- excused myself and stepped away from the customer and out into the entrance hall; and this fellow ~~x~~ was standing there, had just come through the door and was standing there with a gun pointed in her general direction and my -- mine and my wife's.

THE COURT: I don't hear you sir. You are going

D. Sehnert - for People - direct

toofast for me. You came out into the hallway, right?

THE WITNESS: That's right, the entrance hallway.

THE COURT: The entrance hall, yes? And what happened then?

THE WITNESS: Saw this fellow standing there. He was had just two or three steps inside the door and was standing there with a gun pointed in my general direction, and my wife;s; and he motioned me to get off into the office, into the back office.

Q Did he motion with his -- A With the pistol

Q -- the gun? A With the pistol, that's right.

Q Do you recall how this man was attired at that time? A Yes. He was dressed in what appeared to be a dark business suit, light shirt and tie, black raincoat. He had black wavy hair with darkrimmed glasses. Shoes I don't know.

Q Had you seen him ~~xxxx~~ before? A No, never.

Q How was the lighting in the hall at that time?

A Well, the light was above and just slightly behind me so the light was directly in his face, the light that is there.

Q Did you see his face? A Very clearly.

Q Approximately how far away from him were you standing?

D. Sehnert - for People - direct

standing? A Six to eight feet at the most.

Q Did you go into the office after you saw the motion you described? A Yes, when he motioned me into the office, I took a closer look at the gun, and I could see there was -- I could see it was loaded; so I did as he directed and went into the office.

Q Have you been in the military service, sir?

A That's right.

Q What branch were you in? A I was in the Air Force.

Q Did you ever handle small arms? A Oh, yes, many times.

Q I am referring to pistols. A At one time many years ago I had a revolver of my own in California before the service, and in the service, sure, I handled .45s, the sidearm that we used.

Q You say you saw the pistol was loaded?

A That's right.

Q How did you determine that? A Well, you could see the slugs through the opening ~~in~~ in the cylinder.

Q I show ~~x~~ you this object, People's exhibit 2 in evidence, and I ask you if you recognize that object.

A That's the gun that I saw.

THE COURT: What is it, Exhibit 2?

Q. Sehnert - for People - direct

MR. ALBRECHT: Exhibit 2, your Honor.

Q When you went into the office, what happened, if anything? A He motioned us, my wife was in there and my son came in about that time. He told us to line up back against the wall in the back of the office away from the entrance doorway.

Q Were there any customers there? A One customer was there.

Q What was his name, if you know? A Donald Greenwald.

Q Did you line up somewhere you just said? A Against the wall. He motioned us -- told us to face the wall, which we did.

MR. ALBRECHT: Can I have the pointer, please?

(Pointer handed to the witness.)

Q I show you People's Exhibit No. 1 in evidence.

THE COURT: You may step down, Mr. Sehnert.

(The witness left the stand and stood next to People's Exhibit 1.)

Q Does that x fairly represent the floor plan --

A Yes.

Q -- of Don-Lee Studios Inc. on November 2nd?

A That's right.

Q Will you point to ~~xxxxx~~ the wall against which

D. Sehnert - for People - direct

you ~~wxx~~ were standing? A Back here. This door normally we keep closed (indicating.)

THE COURT: You will ~~hh~~ have to indicate before he continues, sir. The record cannot say when you point x to "this wall" because --

x THE WITNESS: I'm sorry.

THE COURT: Mr. Albrecht~~x~~ will describe what you are pointing to.

MR. ALBRECHT: ~~THEXNIXNEX~~ The witness is ~~pnixx~~ pointing to the south wall of a room termed as the office.

THE COURT: All right.

A This door was closed to the laboratory.

Q That was on the south wall, the door on the south wall? A That was closed, so ~~x~~ he had us line up right~~xxhxx~~ here (indicating).

MR. ALBRECHT: Indicating the south wall of the office.

A Along this wall is a large mirror --

THE COURT: "This wall" is what?

MR. ALBRECHT: Referring to the same wall.

A The same south wall, there is a large mirror that comes over nearly to the door, so with three of us in there, I was standing partially in front of this mirror.

D. Sehnert - for People - direct

Q I see. Do you know where your wife was stand-

A You can regain the seat. A She was --

Q wasn't room for her so she was roughly back here.

MR. ALBRECHT: Indicating approximately the middle of the office so designated on Exhibit 1.

THE WITNESS: That's right.

(the witness returned to the witness stand.)

Q What happened upon you getting so lined up on

the wall? A He immediately walked over and

started going through our desk drawers, opening and

emptying them and shuffling through things that were in

there, apparently looking for money or anything; and

after he had done that, he said -- told us to line up

to empty our pockets; so we all reached in our pockets

and took out whatever money we had.

Q Did you take out any money? A Yes.

Q Do you recall approximately how much money

you took out and gave him? A It was only approx-

imately about roughly \$20.

Q Do you know how much money your wife gave him?

MR. DIRENZO: Objected to.

THE COURT: If he knows. Does he know? I will allow it.

Yes. Roughly \$60.

D. Sehnert - for People - direct

Q I see. Do you know where your wife was standing? You can regain the seat. A She was -- there wasn't room for her so she was roughly back here.

MR. ALBRECHT: Indicating approximately the middle of the office so designated on Exhibit 1.

THE WITNESS: That's right.

(the witness returned to the witness stand.)

Q What happened upon you getting so lined up on the wall? A He immediately walked over and started going through our desk drawers, opening and closing them and shuffling through things that were in there, apparently looking for money or anything; and after he had done that, he said -- told us to line up to empty our pockets; so we all reached in our pockets and took out whatever money we had.

Q Did you take out any money? A Yes.

Q Do you recall approximately how much money you took out and gave him? A It was only approximately about roughly \$20.

Q Do you know how much money your wife gave him?

MR. DIRENZO: Objected to.

THE COURT: If he knows. Does he know? I will allow it.

A Yes. Roughly \$60.

D. Sehnert - for People - direct

Q So between the two of you it was \$60 and \$20?

A That's right.

Q Did you hand it to him or what happened?

A As I recall, I reached in my pocket and we put our hands behind us because we were still facing the wall with the money.

Q Did you drop it or did it go into his hand, if you recall? A As far as I know, he took it from my hand. My son had only some loose change, and in shuffling with it he dropped some of it as he started to hand the change to --

Q Did you see that? A I heard the money fall.

Q Did you see the other customer giving anything?

A Just out of the corner of your eye as you are standing facing the wall, you could just see as each one reached back.

Q Did the defendant say anything or did the person say anything -- excuse me. A I beg your pardon?

Q Did the person say anything to you?

THE COURT: The person with the gun say anything to you?

THE WITNESS: Not at that moment. When he was going through the desk drawers I had -- I was partially in front of the mirror and so I -- eased over as much as I

D. Sehnert - for People - direct

could to watch what he was --

Q In the reflection in the mirror? A Into the mirror, so that I could see him while he was --

Q Could you see him in the mirror? A Oh, yes, very clearly. I watched him while he went through the desk and at that time he looked up and saw me watching him, so he said, "Get away from the mirror," or whatever, some such; but he directed me to move away; but in taking the money I don't recall that there was anything said, or then he asked my wife for her purse, ~~wh~~ "Where is your purse?"

Q Do you remember what happened? A Yes, the purse -- we have a filing cabinet that was just to my right there, and her purse was sitting down on the floor beside the filing cabinet, and I started to reach for it; and he said, "I will get it," or something like that. Anyway, wanting me to stay where I was. So he picked up the purse, and as I recall, started going through it, and my wife had kept talking to him a great share of the ~~xx~~ time, and she said, "Well, please, you can take the money; ~~xx~~ you can take anything there, but leave my cards and the papers. Those are of no value."

Q Do you remember what happened then? A After we emptied our pockets for him and he got the money, I am

D. Sehnert - for People - direct

sure he got the money out of her purse last, after that, then he reached for the telephone and tried to tear it loose from the wall, but the cord was wound around down under a desk, so that it wouldn't break loose. He yanked it two or three times, and it wouldn't break & ~~it~~ loose, and my wife at that point said, "Well, please don't break the telephone. We won't be able to do business tomorrow morning." And so with that he untangled or pulled the cord of the telephone away from the desk and set it out into the entrance hall as far as the cord would extend. It was like ten or twelve feet away from us.

Q What happened then? A Well, then he said something to the effect that, "Stay away from the telephone and ~~we~~ don't move for five or ten minutes," whatever it was.

Q Did he take anything else from your person?

A Then he started to go out the door and saw the lock on the door, and he said, "Give me a key to the door." And so I felt that my key was the handiest. I always keep it on a chain in my pocket. So I took it loose and he came back in and took the key from me, then went out the door and warned us again to stay away from the telephone for five minutes or somebody would get hurt.

D. Sehnert - for People - direct

Q After he got out the door what happened?

A He locked the door, and we presumed that he was waiting for the elevator and we waited just two or three minutes and heard no sound out there because you can hear the elevator from our door; and we waited for two or three minutes, and I started edging over toward the telephone and to listen more carefully for the elevator, and just then he unlocked the door and came back in. And so I backed up against the wall again, and he warned us again to stay away from the telephone, and then he went back out the door and locked it again, and then within a minute we heard the elevator go down.

Q Did there come a time thereafter when you did speak to the police that evening? A Well, as soon as I heard the elevator door close and start up -- you can hear the noise -- we got on the telephone and called the police immediately.

Q Did some police officers come over?

A Within five minutes. He could have just barely been clear of the building and they were there just very, very quickly.

Q Did there come a time the following Sunday when you made arrangements with a detective to go to Bellevue Hospital? A That's right.

D. Sehnert - for People - direct

Q Were you there with your wife and Detective John Hanford? A Yes.

Q By the way, sir, do you know the name Robert Wyatt? A Yes.

MR. DIRENZO: Objected to, your Honor.

THE COURT: I will allow it. Overruled.

THE WITNESS: Do I answer, sir?

THE COURT: Yes, you may answer.

A Yes, I know Robert Wyatt.

Q How do you know Robert Wyatt?

MR. DIRENZO: Objected to, your Honor.

THE COURT: Overruled.

A He had worked for us for just a short time, six months before that, about six months before that; a short time being three or four weeks.

Q I would like you to stand up, sir and look about this courtroom.

(The witness stood up.)

I ask you if you see the man who did the acts and made the declarations and held the gun on November 2, 1966 which you have just described to this jury. A Yes, he is sitting at the table over here.

(Continued on Page 427.)

D. Schnert - for People - Direct

MR. ALBRECHT: Would you ask the defendant to stand up, your Honor?

THE COURT: All right.

Stand up.

(The defendant arose)

Q Mr. Schnert, I want you to look at the man very carefully. Are you sure, are you positive that this is the man? A Positive. Absolutely, no question.

Q Please be stated. Mr. Schnert, at that time did you detect -- I am referring to November 2, 1966, during this incident -- any alcoholic odor, naphtha, gasoline, rubbing alcohol, any alcoholic odor at all, during the course of this event? A None at all. None that I could tell.

Q Did the acts and declarations which you have just described impress you as rational or irrational?

MR. DIRENZO: Objected to.

THE COURT: I will allow it.

Overruled. You may answer.

A Completely rational. He knew exactly what he was doing. Everything was very deliberate and --

MR. DIRENZO: I move the answer be stricken.

THE COURT: Overruled.

D. Sehnert - for People - Direct - Cross

Q You referred to his attire that evening. He was dressed in a dark suit with a tie, I believe.

A That's right.

Q Was it neat? A Completely. Like a businessman walking in.

MR. ALBRECHT: You may inquire, sir.

CROSS-EXAMINATION

BY MR. DIRENZO:

Q Mr. Sehnert, when Mr. Albrecht asked you to look about this courtroom to see whether you could identify the man that you say you saw on November 2, 1966, did you look about the courtroom? A Oh yes, of course.

Q Isn't it a fact you looked directly at counsel table? A I've looking about the courtroom all the time.

Q Mr. Sehnert, it is a fact, is it not, that you know the defendant has been sitting here right along; isn't that so? A That's right.

Q You didn't have to look around the courtroom, did you? A That's right.

Q You looked straight at the defense table. You knew he was sitting there; is that correct? A That's

D. Sehnert - for People - Cross

right.

Q Now, you said I think on direct examination that you were within six to eight feet from the man who perpetrated the robbery on November 2nd. A That's right.

Q And was there anything unusual about his posture?

THE COURT: Please keep your voice up a little bit, Mr. Durenzo.

Was there anything unusual about his pocket?

Q His posture, when you observed him? A What's unusual? What do you mean unusual? He came in holding a gun aimed at us.

MR. ALBRECHT: May the record indicate what the witness just did.

THE COURT: He leaned over.

THE WITNESS: That's right. He came in leaning over with a gun as he came in (indicating).

Q Would you go out in front of this jury box,--

MR. DIRENZO: With the Court's permission.

Q -- and describe exactly the way you saw this man.

(Witness leaves witness chair)

A He had just -- he had just stepped in through the door XX -- like the door is back here -- and when I came

D. Sehnert - for People - Cross

he was standing --

Q Would you face the jury when you do it. A He was standing like this when I came out (indicating).

THE COURT: In a crouched position.

THE WITNESS: In a crouched position.

MR. ALBRECHT: With his right arm extended as though he was holding a gun.

THE WITNESS: With the gun.

MR. DIRENZO: And his buttocks protruding to the rear.

MR. ALBRECHT: I wasn't looking at his rear.

MR. DIRENZO: I was.

THE COURT: Take your seat.

(Witness returns to witness chair.)

Q Mr. Sehnert, the man that you say perpetrated the robbery then was in a crouched position when you saw him; correct? A That's right.

Q Incidentally, your wife didn't discuss the testimony she gave in this courtroom with you after she testified, did she? A No.

Q Incidentally, did you ever testify before in this courtroom that when you saw --

THE COURT: Are you limiting it to this courtroom now?

D. Sehnert - for People - Cross

You better change your phraseology.

Q This courtroom or any other courtroom that you saw the man who perpetrated the robbery in a crouched position? A I don't understand your question.

Q Did you ever testify at any time -- A I wasn't asked that question before.

Q Did your wife tell you that she gave the same answer to the statement you just made? A No.

Q In other words, you weren't asked that question before; correct? A That's right.

Q Now, tell me, you told the police, did you not, that the man who perpetrated this robbery was about five foot seven? A I think I said five foot seven or eight, because I knew he was just a shade taller than me.

Q How did you know he was a shade taller than you? A When you stand facing someone you can tell whether your eyes are about level or not level.

Q Was that because you either had walked past the man who perpetrated the robbery or he had passed by you? A That's right.

Q That you were able to approximate the height? A That's right.

D. Sehnert - for People - Cross

Q Now, tell me when this man who robbed you and your wife and Mr. Greenwald came by you was he still in a crouched position? A As soon as I walked by him I no longer saw him because I went back to the wall as he directed. So during the time that I was watching him in the mirror he was always in a crouched position. He was either into the desk drawers or in my wife's purse. So I never saw him standing up right.

Q Tell me, when you told the police that the man that you saw was five-seven or five-eight -- let's take your figure -- did you allow for the crouch? A You don't -- you just tell what you see, and you don't know how much taller he might be, if any.

Q I say, is it fair to state that you did not allow for the crouch when you estimated his height?

A That's right.

Q What did you say about his weight to the police? A I said he weighed roughly 170 pounds.

Q You didn't say 225? A He never weighed 225. Not when I saw him. He was husky but not heavy or fat.

Q And your best estimate is that he was 175?

A 170, maybe seventy-five. But I said roughly 170.

D. Sehnert - for People - Cross

That's what I said to the police.

Q When you said 175, you made allowances, in the best judgment or estimate, crouch and all included; right? A Absolutely.

Q Now, I think you told us that People's Exhibit 2 is the gun, the exact pistol that you saw you saw in the hand of the man that robbed you on November 2nd.

A To the very best of my knowledge.

Q Are you saying it is? A Yes.

Q No doubt about it? A That's right. I looked at it very closely.

Q You kept looking at it, didn't you? A When it is pointed at you you do.

Q Most certainly. And you kept looking at that pistol that you saw in the hand of the man that robbed you; correct? A Yes.

Q As a matter of fact, all the time that you saw this man with the pistol you were concerned about the fact that your wife was there, your son was there, customers were there, you were there, and you were concentrating on that pistol; correct? A That's right.

Q You kept looking at that pistol? A You can't say every second because you watch the man. You see

D. Sehnert - for People - Cross
the whole picture.

Q As a matter of fact, you watched so closely
that you could see the jackets on the bullets through
the chamber? A That's right.

Q That is how closely --

THE COURT: Let him finish his answer.

What is your answer?

THE WITNESS: That's what I had testified to, that
I could see the slugs through the end.

Q Were they copper jackets or silver jackets?

THE COURT: I don't hear you, sir. Keep your voice
up.

MR. DIRENZO: If my voice gets low you get angry and
if I shout you get angry.

THE COURT: I don't get angry at all. The statement
was made by Mr. Albrecht not by this Court that you
were shouting at a witness.

MR. DIRENZO: May I approach the bench and tell
your Honor why I am keeping my voice so low?

THE COURT: Yes, I know why.

MR. DIRENZO: With the district attorney.

THE COURT: You have to keep your voice high enough
for me to hear.

D. Sehnert - for People - Cross

MR. DIRENZO: May we approach the bench?

THE COURT: You may approach the bench.

(Off the record discussion at the bench among the Court, Mr. Albrech and Mr. Direnzo.)

Q Will you tell us, when you were making this keen observation with reference to the ~~HEAVY~~ contents of the slugs, you called them, in the chamber, could you tell us what color jackets? A I think they were copper jackets, but I couldn't be positive. I could see that the chambers were filled. That was the important thing.

Q Tell me something else. Did you ever tell the police that the gun that you saw in the hands or in the hand of the man that robbed you was of a blue metallic substance? A Yes, I told him that.

Q Look at this now, and would you say that in your opinion this is a blue metallic substance? A Yes. It's blue enough for me to call blue.

Q You wouldn't call it silverish rather than blue, would you? A As ~~xx~~ opposed to being chrome plated or something like that, no. This was blue metallic so far as I was concerned.

Q Incidentally, did you also tell him it was a Colt?

D. Schnert - For People - Cross

A No, I said it was a snubnose small caliber, .32 or .38. The record will show that.

Q Thank you. Would you say that while this incident was going on, this robbery, that you were looking at that gun being concerned about your wife, your son, and your customers, and yourself, more than you were looking at the man who was perpetrating this robbery? A No. No.

Q You looked at the man and you looked at the gun?

A Right.

Q There is no question about the identification that you would ultimately make in this case? A No. Absolutely none.

Q Were you ever asked to describe, if you could, the voice of the man who perpetrated the robbery? A I've never been asked that question.

Q Did you remember the voice?

THE COURT: Would you remember the voice?

Is that the question?

MR. DIRENZO: Yes.

Q Would you remember the voice? A I hear voices all day long in talking to people, but to describe a voice sometime later is not always easy.

D. Sehnert - for People - Cross

THE COURT: Strike out that answer as not being responsive.

The question, Mr. Sehnert, is would you recognize the voice?

Is that your question?

MR. DIRENZO: Yes.

THE WITNESS: I'd say no.

Q You heard the defendant say something on November 6, 1966, at the hospital, didn't you?

A I'm sorry, sir?

Q Did you hear the defendant say something -- without telling us what he said -- on November 6th, at the hospital? A Yes.

Q Did you recognize the voice of the defendant as being the same voice you heard on November 2nd?

A I can't be sure.

Q You couldn't be sure? A About a voice like that.

Q You said you noticed that he was wearing a business suit.

THE COURT: How long are you going to be with this witness?

MR. DIRENZO: I really don't know. The --

D. Sehnert - for People - Cross

THE COURT: Then we are going to go for lunch.

MR. DIRENZO: A good idea.

THE COURT: Gentlemen of the jury, you are admonished not to discuss this case among yourselves, not to permit anyone to discuss the case with you, and not to come to any conclusion concerning the case until it is finally submitted to you for your determination.

~~RECONVENE~~ Reconvene here at 2:15.

(Whereupon the Court adjourned for lunch until 2:15 P.M.)

AFTERNOON SESSION

Trial continued.

2:30 P.M.

(The following occurred before the jury entered the courtroom:)

THE COURT: Counsel, I am now directing you that all requests to charge are to be submitted to the Court in writing at the date you sum up to the jury, and any requests you might have.

MR. ALBRECHT: Does that include requests not to charge?

THE COURT: Any requests you have.

MR. ALBRECHT: Thank you, your Honor.

THE COURT: I want them submitted to the Court in writing prior to your summation.

MR. ALBRECHT: Thank you.

(The jury entered the courtroom.)

THE CLERK: People of the State of New York against Walter Wolfrath, defendant. Defendant is present; his attorney, Mr. Direnzo, is present; Assistant District Attorney Mr. Albrecht is present.

(The clerk called the names of the jurors and the alternate jurors.)

THE CLERK: All ~~jurors~~ jurors present.

THE COURT: All right, recall the witness, please.

D. Sehnert - ~~EXX~~ for People - cross

D O N S E H N E R T , having been previously sworn,
resumed and testified further as follows:

THE COURT: All right, proceed, Mr. Durenzo.

CROSS EXAMINATION (continued)

BY MR. DIRENZO:

Q Mr. Sehnert, inviting your attention to the date
of November 6, 1966, you were at your country place with
your Mrs.; is that correct? A That's right.

Q Where is that country place? A In Amity-
ville, New York, Long Island.

Q And some time during that day, you received a
telephone call from Detective Hanford? A That's right.

Q Do you recall whether it was you who spoke to
the detective or whether it was your Mrs. or whether it
was both of you? A I think we both spoke to him.
I know that I spoke to him, and I think we both spoke to
him.

Q And detective Hanford asked you to return to
New York? A That's right.

Q Told you to go to Bellevue? A That's right.

Q Did you tell him you were away at the country
and you didn't like the idea of coming back? A No.

Q Did he tell you it was ~~fn~~ important for you
to come back to New York? A That's right.

D. Schnert - for People - cross

Q Without telling us, did he tell you why it

was important? A He said he had someone for us to see.

Q I didn't ask you that. I said: did he tell you?

A Yes.

Q Why it was important? A No.

Q What specifically did he say to you?

THE COURT: You may answer the question.

A He said that he had someone that he wanted us to see, to look at there.

Q That was the sum total of that which he said to you? A That's right.

Q Did he tell you that he had someone who answered the description of the man who committed the robbery on you? A That answered the description, that's right.

Q He said that? A That's right.

Q When had you previously ~~spoken~~ spoken to Detective Hanford? A Not since the -- not since the night of the robbery I don't believe.

Q Just on one prior occasion, correct?

A That's correct.

Q November 2nd? A That's right.

Q In his conversation with you on the 6th, the telephone conversation while you were at Amityville, did

D. Schnert - for People - cross

Q Without telling us, did he tell you why it was important? A He said he had someone for us to see.

Q I didn't ask you that. I said: did he tell you?

A Yes.

Q Why it was important? A No.

Q What specifically did he say to you?

THE COURT: You may answer the question.

A He said that he had someone that he wanted us to see, to look at there.

Q That was the sum total of that which he said to you? A That/s right.

Q Did he tell you that he had someone who answered the description of the man who committed the robbery on you? A That answered the description, that's right.

Q He said that? A That's right.

Q When had you previously ~~spaks~~ spoken to Detective Hanford? A Not since the -- not since the ~~n~~ night of the robbery I don't believe.

Q Just on one prior occasion, correct?

A That's correct.

Q November 2nd? A That's right.

Q In his conversation with you on the 6th, the telephone conversation while you were at Amityville, did

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D. Schnert - for People - cross

did he tell you that he had received a communication from another detective? A No.

Q You are sure about that? A Sure.

Q Did he tell you he wanted you to see a man who answered the description, the man who perpetrated the robbery on you at Bellevue Hospital?

MR. ALBRECHT: I am going to object to the question. There are two questions there.

THE COURT: I will allow it; overruled. You may answer, Mr. Schnert.

A I'm not sure how you stated that except that he said that he had -- that he wanted us to look at a man that answered the description at Bellevue.

Q When you first started to answer the question, if I heard you correctly, did you say he said he had --

MR. ALBRECHT: Objection.

THE COURT: I will allow it; overruled.

A He said there was a man at Bellevue that answered the description that we had given him, that he wanted us to look at him and see if we could identify.

Q Did he ever tell you "We have the man who"--

A No.

Q -- "who committed that robbery"? A No, no.

Q Did he tell you that they had a man and he con-

D. Schnert - For People - cross
fessed to the -- A No.

Q -- commission of that robbery? A No, no.

Q Tell me, Mr. Schnert, within a your own mind,
on November 6, 1966 --

(Mr. Albrecht arose.)

MR. DIRENZO: Let me finish the question.

MR. ALBRECHT: I didn't say a word.

THE COURT: He didn't say anything, Mr. Drenzo.

MR. DIRENZO: He is standing.

THE COURT: That's all right. You stood when he
was asking some questions too, on a standing objection.
Go ahead.

Q Did you anticipate or know that you were going
to identify the man that committed the robbery?

MR. ALBRECHT: Objection.

THE COURT: I will sustain that. You may have an
exception.

Q After having ~~spoken~~ spoken to Detective Hanford,
in your own mind, as a result of that conversation that
you had with Detective Hanford, did you know that all
you had to do was go down and ~~identify~~ identify the man?

MR. ALBRECHT: Objection.

THE COURT: Sustained. We are here searching for

D. Sehnert - for People - cross
facts, not for mental processes.

MR. DIRENZO: Your Honor ruled. I yield to
your Honor's mandate. I don't agree but I yield.

THE COURT: That's all right. I care not whether
you agree or not. Proceed.

Q Was there anything said to you in that con-
versation with Detective Hanford before you got to the
hospital that satisfied you that they had apprehended
the man who had committed the robbery at Don-Lee Studio?

A No.

MR. ALBRECHT: Objection.

THE COURT: Overruled.

A No.

MR. ALBRECHT: The answer is what?

THE COURT: "No."

MR. ALBRECHT: Thank you.

MR. DIRENZO: You heard the answer.

Q When had you gotten to Amityville?

THE COURT: Sustained. Irrelevant and immaterial ,
on the Court's own motion.

Q Did you state to Detective Hanford, "Why can't
we do this tomorrow?" A No.

Q Did you say to him, "Do we have to return from
Amityville just to look at somebody?" A No.

D. Sehnert - for People - cross
#-redirect

Q Incidentally, Mr. Albrecht asked you about the wearing apparel you observed on the man that you say robbed you. You said something about his shoes?

A No, I said I didn't know what kind of shoes. I didn't pay any attention.

Q Was he wearing shoes? A If he hadn't ~~txhxx~~ been wearing shoes I would have noticed that.

Q He wasn't wearing sneakers, or don't you know?

A I don't know, but I doubt it. I am sure they were dark shoes. ~~Otherwise~~ Otherwise, anything light would stand out.

MR. DIRENZO: No further questions.

REDIRECT EXAMINATION

BY MR. ALBRECHT:

Q Mr. Sehnert, when you went to the Hospital, I believe you testified to the jury in cross examination that you came into the presence of the defendant and you heard him say something? A That I heard the defendant say something?

Q Yes, sir. A Yes.

Q What did you hear him say?

MR. DIRENZO: Objected to, not proper redirect.

THE COURT: Overruled.

A When we walked up to him and confronted him, It

D. Sehnert - for People - redirect
seems that he said something to the effect to the detective that, "Yes, those are the people."

MR. DIRENZO: Object to it, move that the answer be stricken.

THE COURT: Overruled. You may have an exception.

MR. DIRENZO: May we have that answer read, your Honor, please?

THE COURT: "Yes, those are the people."

MR. DIRENZO: No.

THE COURT: You want the whole answer?

MR. DIRENZO: The entire answer.

THE COURT: All right, read it, please, Mr. Reporter.

(The last answer was read.)

THE COURT: Any more questions?

MR. ALBRECHT: No more questions.

THE COURT: All right. Recross?

MR. DIRENZO: Yes.

(Continued on Page 446.)

D. Sehnert - for People - Recross

RECROSS-EXAMINATION

BY MR. DIRENZO:

Q Do you remember specifically, Mr. Sehnert, what, if anything, defendant said? A When? In the hospital?

Q Yes. A Just -- just that -- just those few words.

Q Did I understand you to state in answer to Mr. Albrecht's question, it seems that he said something to the effect? Was that what you prefaced your answer by?

A You don't remember exact words, but he said, "Yes, those are the people." Or "I believe those are the people." or something to that effect." Yes.

Q And this was without asking the defendant a question in your presence; correct? A That's right.

Q "Seems that they are the people. It seems that they are the people"? A I don't believe he said, "It seems."

Q Tell me what your best recollection is as to ~~which~~ that which he stated. A The specific words that I remember, "Those are the people" Whether he prefaced that with anything, I don't know. I don't believe so.

Q And did he say, "I did it"? A Not to us.

D. Schnert - for Pepple - recross

Q He didn't say that, did he? A No.

Q You didn't hear him say it? A No.

Q And if he said it you would have heard it?

A Not to us; he didn't say it.

Q Definitely he didn't say it; right? By the way, you said --

MR. ALBRECHT: Objection. He didn't give him an opportunity to answer.

Q Please answer. I didn't mean to interrupt.

A No, he didn't say that to us.

Q When you say he didn't say that to us, who is "us," u s? A My wife, myself, and Det. Hanford.

Q If your wife testified and told this jury that the defendant in words or substance said, "I did it," would you say she made a mistake? A I don't remember hearing that.

Q You don't remember hearing it? A That's right.

Q Would you say that the defendant said that?

A I don't know.

Q Didn't you tell us a moment ago that he didn't say that? A He said, "Those are the people." That I remember.

Q Now, I ask you, did he say, "I did it"? A I

D. Schnert - for People - Recross

don't know.

Q Did you tell us before he did not say it?

A No, I didn't say a moment ago that I said that he said, "I did it." I didn't say that.

Q Let's see if we can nail this down. Are you telling the jury now that he did or did not say, "I did it?"

A I didn't hear that.

THE COURT: Next question.

MR. DIRENZO: No further questions.

THE COURT: Any further questions?

MR. ALBRECHT: No, your Honor.

THE COURT: Mr. Schnert, thank you very much.

You are excused.

THE WITNESS: Thank you, sir.

THE COURT: Call your next witness.

MR. DIRENZO: If your Honor pleases, I don't know if I looked at his grand jury testimony.

May I look at it, please?

Did he testify before the grand jury?

MR. ALBRECHT: No.

THE COURT: You may go.

(Witness excused)

MR. ALBRECHT: May we approach the bench?

Proceedings

may, whether or not the defendant is requesting --

THE COURT: Keep your voice down.

MR. ALBRECHT: -- is requesting this Court at the termination of this case to challenge or to ask the Court to charge this jury on the question of voluntariness of that statement and whether the question of voluntariness of that statement is before this Court.

THE COURT: I am going to charge it anyway pursuant to Huntley. The ~~Mass~~ Massachusetts rule will be followed. I am going to charge it. You don't have to ask him the question.

MR. DIRENZO: I have not answered his question and won't answer it.

MR. ALBRECHT: That is all I want to know.

THE COURT: I answered it for you, Mr. Direnzo. That may be the first and last question I am going to answer for you.

(The conference at the bench then ended and the following occurred within the hearing of the jury:)

DETECTIVE JOHN HANFORD,
Shield No. 982, Eighteenth Squad, Manhattan South
Detectives, New York City Police Department, called as
a witness in behalf of the People, having been first
duly sworn, testified as follows:

MB10-7

Hanford - for People - direct

DIRECT EXAMINATION

BY MR. ALBRECHT:

Q Detective Hanford, how long have you been a member of the New York City Police Department?

A About 15 years.

Q How long have you been a detective?

A Approximately 12 years.

Q Are you married, sir? A I am.

Q Do you have children? A I do.

Q Detective --

THE COURT: How long have you been a detective, 12 years?

THE WITNESS: 12 years, your Honor.

THE COURT: And a police officer?

THE WITNESS: 15, your Honor.

THE COURT: All right.

Q Detective, on November 2, 1966, a Wednesday, did there come a time early that evening when you were assigned to a particular squad in the City of New YorkX?

THE COURT: On what date are you referring to?

MR. ALBRECHT: 2nd of November 1966.

A Yes.

Q What squad is that? A The 18th Detective Squad.

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Manford - for People - direct

Q Did there come a time in the arly evening hours that you responded to 130 West 57th Street in the city, county, and state of New York? A Yes.

Q And was that at the Don-Lee Studios, Inc. on the 10th floor? A It was.

Q Approximately what time did you get there?

A I'm not sure, around 7, I guess, something like that.

THE COURT: Keep your voice up.

A Around 7, somewhere around that time, your Honor.

Q Do you know what time you got there?

A No, I don't.

Q Did you make a record of it? A Yes, I have a record of it.

Q Could you look at the record and refresh your memory? A Yes.

Q Will that help you? A Yes, it will.

(The witness produced papers.) It was about 8:20 P.M.

Q At that time did you meet a Mr. and Mrs. Sehnert? A I did.

Q Did you file reports with regard to that matter? A I did.

Q And were you assigned as a detective in the 18th Detective Squad for the investigation of that particular incident? A I was.

Hanford - for People - direct

Q Thereafter, did you receive an official communication from the Police Department relating to that incident? A I did.

Q And did you arrange to meet with the complainants, the Sehnerts, at Bellevue Hospital on November 6, 1966? A Yes.

Q That was a Sunday? A It was a Sunday.

Q Approximately what time were you at the hospital, to you best -- A It was in the arly afternoon around 2, 2:30, somewhere around there.

Q And did you go up to a particular ward? A I did.

Q And did there come a time when you got to that ward that you had a conversation with somebody?

A There did.

Q Do you see the person in this room with whom you had that conversation? A I do.

Q Would you please point to him? A The gentleman in the brown suit with the glasses (indicating).

MR. ALBRECHT: May the record indicate he pointed to the defendant.

THE COURT: Yes, sir. What date did you go to Bellevue Hospital, sir?

THE WITNESS: It was November the 6th, your Honor.

Q Officer, when you got up to that ward or

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Hanford - for People - direct

wherever you were, tell us what happened. A Well, I got off the elevator with the complainants, and I requested that the complainants stand by the elevator while I walked down the corridor where I had observed a uniformed officer with the defendant sitting in a wheelchair.

Q The defendant was in custody at that point, was he not? A He was in custody.

Q What did you say to the defendant at that point, and what did the defendant say to you, if anything?

A MR. DIRENZO: Objected to, your Honor.

THE COURT: I will allow it; overruled.

A I introduced myself to the defendant as Detective Hanford of the 18th Detective Squad, and informed him that I was investigating a robbery that took place on November 2nd, and that before any further questioning, I wanted to advise him of his civil rights.

Q You told him that? A I did.

Q Did you have any papers in your hand or did you read anything to him?

MR. DIRENZO: I object to the form of the question.

THE COURT: I will allow it, overruled.

A Yes, I did.

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Hanford - for People - direct

Q Do you have that piece of paper in court today?

A I do.

Q Produce it, please.

MR. DIRENZO: One minute. If your Honor please, at this time I desire to make a formal motion. If you want me to make it in the absence of the jury --

THE COURT: Why don't you make it over here ~~xxxx~~ at the side bar? Step up.

(The following occurred at the side bar out of the hearing of the jury:)

MR. DIRENZO: If your Honor pleases, I object to the receipt of any evidence from this witness ~~xxxx~~ through or by which he received any lead direct or indirect as a result of any conversation or information that he received from Detective Spano. It is my contention that since there was noncompliance with the requirements enumerated in the Miranda case, that any information that reached this witness --

THE COURT: Are you talking about the fruits of a poisoned tree doctrine?

MR. DIRENZO: Basically the fruits of the poisoned tree. And two, if your Honor, please, he is now-- he will then be permitted to --

THE COURT: Let me just rule on that one so that

Hanford - for People - direct

you have that out of the way.

MR. DIRENZO: All right.

THE COURT: That application is denied. Now start on the second one, because if I granted your first one --

MR. DIRENZO: I beg your pardon?

THE COURT: If I granted the first one, then you wouldn't have to make the ~~XXXXXX~~ second.

MR. DIRENZO: I understand that.

THE COURT: So let's do it in an orderly fashion. I am denying your first application.

MR. DIRENZO: All right, exception. I have noted my exception.

THE COURT: The exception goes along automatically but you can have an exception on that. All right, number two.

MR. DIRENZO: I am going to withhold number two at this time.

THE COURT: All right.

(The side bar conference ended and the following occurred within the hearing of the jury:)

(Continued on Page 22x 386.) -

Hanford - for People - Direct

THE COURT: Let's proceed.

EXAMINATION BY MR. ALBRECHT:

Q Officer, what did you read to the defendant, I asked you. Will you produce the paper you read to him.

THE COURT: Let's mark it.

MR. ALBRECHT: Let the record indicate the officer has produced a book with a piece of paper stapled in the book.

Q Would you remove that piece of paper stapled in the book, officer.

(Witness removes paper)

(Mimeographed paper marked People's Exhibit 9 for identification.)

THE COURT: Go ahead.

Q Officer, is this the actual piece of paper, the actual piece of paper, which you had in your hand on November 6th, and the actual piece of paper which you read, the very words which you read, to the defendant? A That's correct.

Q Would you state what you read to the defendant, and his reply if it called for a reply, if any. A "You have the right to remain silent and refuse to answer questions. Do you understand?" He replied yes. "Anything

Hanford - for People - Direct

you do say may be used against you in a court of law. Do you understand?" The reply was yes. "You have the right to consult an attorney before speaking to the police and to have an attorney present during any questioning, now or in the future. Do you understand?" The answer was yes. "If you cannot afford an attorney one will be provided for you without cost. Do you understand?" He replied yes. "If you do not have an attorney available you have the right to remain silent until you have had an opportunity to consult with one. Do you understand?" He replied yes. "Now that I have advised you of your rights are you willing to answer questions without an attorney present? Do you understand?" He said yes.

Q Officer, as to relating to this incident, what did the defendant say -- what did you say to the defendant and what, if anything, did the defendant say to you?

A Well, I asked him if he had committed the robbery in the Don-Lee Studios on November 2nd and he said that he had. He said that the job had been setup by a Robert Wyatt who was a former employee at the Don-Lee Studios. He said that Wyatt had given him the gun to do the job with. I asked him, I said, "Why are you telling me this?"

Handord - for People - Direct

And he said that the reason he was making this statement and confession was that he wanted to see Robert Wyatt get into trouble because he let his wife, Robert Wyatt's wife Laura take the rap for the gun.

Q Officer, when you spoke to him what was his position? Where was he sitting, standing; what was he doing? A He was seated in a wheel chair.

Q Was he alert and responsive? A He was.

Q Did there come a time when the complainants came over; yes or no? A Yes.

Q Did the defendant, if you recall, say anything in their presence? A He said something to the effect that "I did it," or "I was there."

MR. DIRENZO: What was that answer?

THE WITNESS: He said something to the effect that "I did it," or "I was there."

Q Did you ask him whether the gun was loaded?

A I don't recall.

Q Officer, did you have an opportunity thereafter, after that day, to observe the defendant? A I did.

Q I am talking about physically observe the defendant. A I did.

Q Did the acts and declarations impress you as

Hanford - for People - Direct

rational or irrational?

MR. DIRENZO: I object to the form of the question.

THE COURT: I will allow it.

Overruled.

A Rational.

Q Do you have some notes in regard to this matter, officer? A Do you want the 61?

Q Yes, please.

(Handed to Mr. Albrecht.)

MR. ALBRECHT: Let the record indicate that I am handing to counsel for the defendant the officer's notes and the grand jury testimony.

MR. DIRENZO: Do you have a memo book?

THE COURT: Let's mark it, please. Before you hand him something let's mark it for identification.

MR. ALBRECHT: May we have the notes --

THE COURT: One at a time.

MR. ALBRECHT: -- marked as People's Exhibit --

THE COURT: One moment. You are going to mark this and he can't take down what you are saying while he is marking the grand jury minutes.

MR. ALBRECHT: I am trying to get a number.

THE COURT: He still only has two hands.

1. Sehnert - for People - cross

~~xxxxx~~ MR. DIRENZO: Oh, good.

CROSS EXAMINATION BY MR. DIRENZO:

Q Mrs. E Sehnert, did you at any time prior to testifying here today, testify ~~was~~ before a grand jury?

A Yes, sir.

MR. ALBRECHT: May the record indicate I am handing a copy of the grand jury testimony of the witness --

* THE COURT: Let's mark that People's 3 for identification

MR. ALBRECHT: May the record also indicate that counsel would like the minutes of all prior proceedings, I am ~~handing~~ hereby offering them to him.

~~xxx~~ MR. DIRENZO: Let the record show he has offered them to me and I have accepted.

THE COURT: Let's mark ~~th~~ them for identification. When you say all records, what is it, a bound volume?

~~xxx~~ MR. DIRENZO: A bound volume of minutes.

THE COURT: All right, bound volume of minutes. Make it 4 for identification.

MR. DIRENZO: And the enumerated pages are 1 to 178, which only contains a portion of Mrs. Sehnert's ~~testi-~~ testimony.

THE COURT: All right.

(Grand jury minutes marked People's Exhibit 3

M. Sehnert - for People - cross

for identification.

(Bound volume of testimony deemed marked People's Exhibit 4 for identification.)

THE COURT: When you say that contains her testimony in part, didn't you get an additional part of that added to it today?

MR. DIRENZO: That has already been put in.

THE COURT: You said a portion.

MR. DIRENZO: I don't want ~~in~~ the record to indicate that all of the enumerated pages that I have mentioned contain her testimony. Just a portion in that record reflects her testimony.

THE COURT: I just want to get it straight in my mind as to what it contains. All right.

Q Mrs. Sehnert, in addition to the grand jury testimony which the district attorney has already made available to us, which I have not as yet read, did you make any statements to the District Attorney or anyone in the Police Department concerning the occurrences which you said happened on November 2, 1966?

THE COURT: Have you got any notes?

MR. ALBRECHT: Do you mean oral or --

MR. DIRENZO: Oral or otherwise.

MR. DIRENZO: Electronic or otherwise, recorded
otherwise, written or otherwise, any statement, any-
re, any time, in connection with this case.

MR. DIRENZO: You want to ~~make~~ mark it for identification?

~~XXXXXXXX~~ (Copy of complaint marked People's Exhibit
5 for identification.)

THE COURT: Mark it People's Exhibit 6x for identification.

MR. ALBRECHT: Could you just mark this portion

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M. Sehnert - for People - corss

below the line, so to speak.

(Continued on Page 233.)

M. Sehnert - for People - Cross

MR. ALBRECHT: I think Mr. Drenzo has had an opportunity to inspect certain police records in this case and if he would like to, I would offer them; I don't have them on my person, the witnesses have them in the other room and I will give you those records now if you want them now.

MR. DRENZO: I will take them now.

THE COURT: Do you want to ask permission of the Court to leave?

MR. ALBRECHT: May I have permission of the Court to leave?

THE COURT: Yes, all right.

(Mr. Albrecht leaves courtroom momentarily and returns with papers).

MR. ALBRECHT: May the record indicate that I am giving to Mr. Drenzo a series of reports --

THE COURT: How many papers?

MR. ALBRECHT: 1, 2, 3, 4, 5, 6 pages and -- 6 pages and 1, 2, 3 cards entitled -- the top copy is entitled supplementary complaint report, blue in color.

MR. DRENZO: Could we have the U.F. 61 and D.D. 5?

THE COURT: We will mark it People's Exhibit 7, all those papers and then break them down later 7A, B, C and D.

M. Schnert - for People - Cross

(Papers furnished by District Attorney received in evidence and marked collectively People's Exhibit 7).

THE COURT: Do you want an opportunity to read them now before you inquire?

MR. DIRENZO: No, I will continue my inquiry, if your Honor pleases, and Mr. Coiro will examine the People against Rosario hearing.

THE COURT: You are referring to the reports, everything given to him pursuant to People against Rosario.

Q Did there come a time when you saw Mr. Albrecht at his office? A I don't know what you mean by his office.

Q Well, his office is at 155 Leonard Street in the Borough of Manhattan, City and County of New York;

MR. DIRENZO: What are you on, the sixth floor?

MR. ALBRECHT: Yes.

Q He is on the sixth floor. A The day that I came to the Grand Jury --

THE COURT: No, no, he asked you did there come a time that you saw Mr. Albrecht in his office, and the --

THE WITNESS: Yes.

THE COURT: -- answer to that is yes or no.

M. Sehnert - for People - Cross

THE WITNESS: Yes.

THE COURT: All right.

Q You saw him at his office. Did you see him alone or was someone with him? A There were other gentlemen in the room.

Q In the room but when you went there you went there alone? A I went alone.

Q And when you went into his room I take it that you went into that room before you went up to the Grand Jury to testify? A Yes, sir.

Q When you went into that room Mr. Albrecht ask you questions? A No, sir.

Q Anybody in his presence ask you any questions? A No, sir.

Q Then I take it you want this jury to understand that when you went to his office he said nothing to you?

MR. ALBRECHT: When is this, when she went to my office, when is it, before this trial or --

MR. DIRENZO: Hold it.

MR. ALBRECHT: I don't know when he is talking about.

THE COURT: Will you ask the question --

MR. DIRENZO: Will you be good enough --

M. Sehnert - for People - Cross

THE COURT: One moment please --

MR. DIRENZO: Yes.

THE COURT: -- so I can straighten it out for Mr. Albrecht.

MR. ALBRECHT: Yes.

THE COURT: The question asked is did you ever visit Mr. Albrecht at his office; --

MR. ALBRECHT: Before the Grand Jury proceeding?

THE COURT: No, no, please; the answer is yes. The question is when; before she went to testify at the Grand Jury.

MR. DIRENZO: That is correct.

THE COURT: He is asking her a question only at that particular time, --

MR. DIRENZO: Correct.

THE COURT: -- was anybody there; did he have any discussion with you.

MR. ALBRECHT: This is before the Grand Jury proceeding?

MR. DIRENZO: Yes.

THE COURT: Very simple if you are paying attention, that is what I am talking about.

THE WITNESS: Can I clarify something.

M. Sehnert - for People - Cross

Q Mrs. Sehnert, trust in me. A I do.

Q Let me ask the question. There came a time before you testified before the Grand Jury that you went to Mr. Albrecht's office, is that correct?

A Right.

Q And you told us and you told the jury that you went there alone? A Right.

Q And that when you went there there were other people present in his office? A Right.

Q And I asked you whether any questions were put to you at that time by Mr. Albrecht and whether you made any answers to those questions. I asked you that and did you say that no questions were asked of you and you made no answers to questions?

THE COURT: Relative to the incident he is talking about, I mean the hold-up. Did he ask any questions at that time, Mr. Albrecht?

THE WITNESS: He asked me if this was our place --

THE COURT: The answer is he asked you questions?

THE WITNESS: Yes.

MR. ALBRECHT: Your Honor, the witness doesn't understand what -- your Honor, may I approach the bench with counsel?

M. Schnert - For People - Cross

Q Forget it; you tell us what happened.

THE COURT: Now look, Mr. Durenzo, when a request is made I will rule on it, not you.

MR. DURENZO: You are absolutely right and I apologize to your Honor.

THE COURT: All right; no need for approaching the bench. Proceed, Mr. Durenzo.

Q Now will you tell us what happened when you went to his office? A Yes, sir.

THE COURT: Please do.

Q Now tell us. A I was then told that this was to be a Grand Jury thing that I was called here for.

Q Who said that to you? A Mr. Albrecht told me it was a Grand Jury. I didn't know what it was when I came up to his office.

Q Now may I take the liberty of asking you this question? A Yes, sir.

Q Did he state to you that you were going to be a witness; that you would answer certain questions that were going to be put to you before the Grand Jury?

A He told me I would be asked to identify somebody in the Grand Jury.

Q That's all he said to you? A Yes, sir.

M. Sehnert - for People - Cross

Q Now tell me, when he was talking to you did you make responses to the utterances or questions that he put to you? Did you answer him? A Of course.

Q Definitely. And when he asked you these questions did he have a yellow pad in front of him?

A This I don't know.

Q Did he have any kind of paper in front of him?

A He had all sorts of things on -- on the table. I don't know what they were.

Q And when you were talking to him was he making any notations on paper or anything else?

THE COURT: If you can recall.

A I don't remember.

THE COURT: O.K., next question.

Q Was anybody else present in that room at that time making any writings? A Any writings? I am sorry, any writing?

Q Making any entries contemporaneously with the answers that you were making? A No, sir.

Q So that you can say that you didn't see anybody write anything? A No, sir.

Q And to your knowledge nothing was being electronically transcribed or recorded at that time?

M. Sehnert - for People - Cross

A No, sir.

Q Did there come any other occasion where you were in Mr. Albrecht's office and he spoke to you or asked you questions?

THE COURT: At any other time after that.

A No, sir.

THE COURT: All right.

Q Now was he at your office? A Yes, sir.

Q When was that? A This I don't remember.

Q You have no independent recollection?

A Maybe a week and a half ago.

Q That's what I say, it happened only a short time ago? A That's right.

Q Within days or weeks, is that correct?

A That's right.

Q And on that occasion he saw you at your office?

A Yes, sir.

Q Was he alone or was he with someone?

A He was alone.

Q He asked you questions? A I didn't have time, we were so busy.

Q Then he didn't talk to you? A He asked me if we -- if I would come down when it was necessary.

M. Sehnert - for People - Cross

Q He came to your office on 57th Street to ascertain from you whether you would go down to the District Attorney's office or the courthouse if it became necessary, is that your answer? A That's right.

Q That's all he said to you, correct?

A He asked me if this was the office where we were held up and I said yes.

Q Ask you any other questions? A I don't recall them.

Q It was only a week ago? A That's right.

Q Well, can't you tell this jury that he did or did not ask you any other questions? A If he did I don't recall the questions.

Q And that was only a week/ago? A That is right.

Q By the way, when he was speaking to you as you say, did he make any note on pieces of paper?

A This I am not aware of either.

Q Now there came a time, did there not, when you saw a Mr. Farrell? A I don't remember the name.

Q Well now, let me ask you this, did there come a time when a man came to your office and told you he

M. Sehnert - for People - Cross

was an engineer or an architect assigned to the District Attorney's office, did there? A Yes.

Q Now does the name Farrell refresh your recollection in any way? A No, sir, the name does not.

Q And did he tell you he had been there at the direction of Mr. Albrecht? A I don't recall at the direction of anybody.

Q And did you know that Mr. Farrell was coming to your office before he got there? A No, sir.

Q In other words, he was not there by appointment with you? A No, sir.

Q Or your husband or your son, to your knowledge?
A No, sir.

Q Do you know whether Mr. Farrell or anyone, an engineer or an architect from the District Attorney's office ever did in fact go to your office?

A Somebody came and took the measurements of our office.

Q And who that somebody was you didn't know, is that correct? A If you mean that t/ did he show me a badge, no.

Q In other words, you didn't even know he came from the District Attorney's office, is that correct?

M. Sehnert - for People - Cross

A I assume.

Q I will ask you a very stupid question. Why did you assume?

MR. ALBRECHT: I object to him asking stupid questions.

MR. DIRENZO: Because no lawyer --

THE COURT: Mr. Drenzo, an objection is made, I will rule on it, I want no colloquy. You will proceed pursuant to the rules of evidence and judicial conduct and trial conduct in this case.

MR. DIRENZO: Again I yield to your Honor's mandate.

THE COURT: No cross-conversations. The jury will disregard the statements made by counsel.

MR. DIRENZO: I join in it.

THE COURT: All right. Do you --

Q Now I am asking you --

THE COURT: One minute --

Q -- why did you --

THE COURT: -- please, Mr. Drenzo, an objection I thought was made.

MR. DIRENZO: Will you read the question so I can make a ruling?

MR. DIRENZO: Can I state to your Honor, I asked her

M. Sehnert - for People - Cross
why she assumed.

THE COURT: All right.

MR. DIRENZO: THAT IS A QUESTION counsel already
asked.

THE COURT: The objection is overruled.

Q All right. You have been directed to answer
the question.

MR. ALBRECHT: She has not been directed to answer
the question. I ask that his remarks be stricken.

MR. DIRENZO: Objection overruled, that is what I
thought I heard.

THE COURT: That's right, and when I overrule it
she is directed to answer.

MR. ALBRECHT: I didn't hear your Honor direct her
to answer that question. I think his cross-examination
is entirely improper here and --

THE COURT: Strike that from the record.

MR. DIRENZO: And I am not interested in your opinion.

THE COURT: Mr. Drenzo --

MR. ALBRECHT: Do I have to be subjected to abuse
from him?

MR. DIRENZO: I don't have to be subjected to yours.

THE COURT: All right now, I am going to make the

M. Sehnert - for People - Cross
record clear. Mr. Direnzo and Mr. Albrecht, if I have another outbreak of this type of conduct I shall hold either one of you in contempt and I will summarily punish you for that contempt.

MR. DIRENZO: I promise your Honor there will be no contumacious conduct on my part.

THE COURT: Desist from this conduct.

MR. DIRENZO: I state it to your Honor with due reverence to your Honor.

MR. ALBRECHT: Your Honor, do we have to --

THE COURT: Sit down, Mr. Albrecht.

MR. DIRENZO: I am not going to take the comment from the D.A. and let it go unanswered when I think it is improper.

THE COURT: You will take any direction from the Court, Mr. Direnzo.

MR. DIRENZO: I will.

THE COURT: Next time you do that try to answer. Mr. Albrecht, if you do that again without requesting permission from the Court you are going to wind up being charged with contempt of court; you know the penalty for that. You are liable to be inside there before somebody else will. Let us continue.

MR. DIRENZO: At this time, if your Honor pleases, based on your Honor's remarks, I move for a mistrial and the withdrawal of a juror, on the ground that your comment was prejudicial and was basically injurious to the defendant.

THE COURT: Your application is denied.

MR. DIRENZO: Respectfully except.

MR. DIRENZO: May I proceed, with the Court's permission?

THE COURT: Yes. Please answer the question.

THE WITNESS: I assumed because we had been held up, who else would come and take measurements of the office.

Q In other words, you received ~~if~~ no communication from the District Attorney's office, the Police Department, any detective, any law enforcement agent, nobody, that somebody was coming to your office to make measurements in connection with the robbery that occurred in your place on November 2, 1966. Is that your truthful answer/

MR. ALBRECHT: Your Honor, may I have an objection at this time, to the raising of the voice and yelling at this witness/ I don't think it is necessary, and I state

my objection for the record.

THE COURT: Please modulate your voice, Mr. Direnzo.
What is the answer?

THE WITNESS: I am confused.

THE COURT: Read the question.

(The question was read by the reporter)

THE WITNESS: As far as I recall.

Q So that as far as you are concerned, we can state and we can understand that anybody can come into your office, take any measurements they want and it would be all right with you?

MR. ALBRECHT: Objection.

THE COURT: I will allow it. Overruled.

THE WITNESS: Do I answer or don't I?

THE COURT: Yes, you may answer.

THE WITNESS: I am not the boss up there.

Q Who is the boss? A My husband. I don't make decisions.

Q Then, as far as you are concerned, are you telling us that the boss, your boss, or your husband might have given permission for this? A This I don't know.

Q You don't know it to this day, as you testify from that witness stand --

THE COURT: Please stop pointing your finger at

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the witness.

MR. DIRENZO: I will put my hands in my pocket.

THE COURT: No, you won't.

MR. DIRENZO: All right; I will keep them out.

MR. ALBRECHT: Objection.

Q Is it your testimony, Mr. Sehnert, if my voice is too loud, tell me, that on this day, as you testify from that witness stand, you don't know that your husband did give or did not give his consent for the taking of measurements in your premises concerning the robbery which allegedly occurred on November 2, 1966?

A I do not know whether my husband did or did not give his consent to have measurements taken of our office.

Q Is it fair to state that your husband never told you one way or the other? A That is correct.

Q Now, you testified on direct examination that there came a time when this man rushed into your office and told you there was a stickup, in words or substance, and ask^{ed}/you to give him your money; correct?

MR. ALBRECHT: I am going to object to that, the form of that question.

MR. DIRENZO: I ~~enjoy~~ withdraw it.

Sehnert - People - cross

THE COURT: All right.

Q You tell me what that man said to you.

A From the beginning, sir.

Q Tell me the whole story. A You mean from the time that he came in.

Q From the very beginning, so there can't be any problem about it. A A man burst through the door from the outside hall.

Q Would you be good enough to hold it for just a minute, please? Would you start off with a man burst through the door? Tell us from that point on.

THE COURT: You tell us what the man said as he came in, in your own words.

THE WITNESS: When he came in, he said: Don-Lee Studios, this is a tisk up. I don't want to hurt you, but I will kill you if I have to. Do you want me to go on from there?

THE COURT: Yes. That is his question.

THE WITNESS: I told him that we would do what he wanted us to and asked him not to hurt anybody, and he asked me if there were other people there, and I told him yes. I told him that my husband would be coming through a door from the women's work room back of him,

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Sehnert - People - cross

and that my son would be coming through a door from the men's room to the right of him, and I asked him if I could call my husband, and he said yes. I did call my husband and when he came out through the door I told him that the man was holding us up and please not to do anything and to do what the man wanted us to.

Do you want me to go on from there?

THE COURT: Yes, man. That's what he asked you.

THE WITNESS: Before my husband had come out through that door, one of our clients had come out from the men's work room and the man with the gun had lined him up in my office. Then when my husband came out from the women's work room he then lined my husband up in there. He had my husband - my husband had stopped in front of the mirror that was hanging on the wall, and he told him to get away from the mirror. My son came out from the men's work room, and I told Ron that it was a holdup, and please to do what the man wanted him to. And he came over, and he was also lined up in my office against the door. The man with the gun went through - came into my office and went through some of the desk drawers. He didn't go through all of them. And then he demanded money from all of us who were lined

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Sehnert - People - cross

up in my office. He took money from Mr. Greenwald, change from my son, and money from my usband, and I asked him if I could reach for my purpe, which was there on het floor by theside of my desk to give him themoney. He told me yes. I did reach for it, and he started to take my purse and, of course, at t at time he was in the of- fice with us by the side of my chair, which is right in front of my desk.

I asked him if I could keep my purse, and he said yes, to give him the wallet, and I took the wallet out of my purse and started to hand it to him, and asked if I could have the papers out ofmy wallet, which were hard toreplace, and he said just ga to give him the money out of the wallet, which I did, and hand it to him. At the very end x he then lined me up against the wall, and I was in frontof the mirror and he asked me to move over also. He tried to pull the 'phone out of the wall, the cord, and couldn't, and then tried to mash the phone, and I told him we couldn't do busi- ness if he mashed the phone. He asked my husband for a key to the front door. My husband gave it to him and he said that he would leave the phone alone if we promised not to call thepolice for, I think it was, abot

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Sehnert - People - cross

ten minutes. He took the key and went out the front door and locked it from the outside. He was out there only a few seconds and he opened the door with the key and came back in and said: don't touch the phone, went out again, locked the door from the outside with the key.

Q How much money did he take from you/

MR. ALBRECHT: Your Honor, I am going to object to Mr. Dorenzo looking at statements which have nothing to do with his examination. I gave him one particular exhibit here. He asked for the notes, which I made when I interviewed the witness.

THE COURT: Sustained.

MR. ALBRECHT: I find him now doing something else.

MR. DIRENZO: I am keeping my mouth shut because your Honor has directed me. Under the punishment of being held for contempt I would not look at a paper I am not supposed to look at.

THE COURT: All right. Proceed.

MR. DIRENZO: I have been practicing too long for that.

Q How much do you say was taken from your purse?

A I can't be exact, sir, but I would say approximately 60 dollars.

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Schnert- People - Cross

Q Did you ever say anywhere, at any time, under oath, that more than 60 dollars was taken from your purse? A From my purse; no, sir.

Q Will you read --

THE COURT: Handing the defendant what exhibit?

MR. DIRENZO: I don't know. People's 5 for identification.

Q Look at it first, please. A Where is it/
X Excuse me. I don't know what he wants me to look at.

THE COURT: He wants you to read the paper.

Q Read it.

THE COURT: Have you read it, Madam?

THE WITNESS: Yes.

THE COURT: The witness has read it, Mr. Direnzo.

Q Did you read it? A Yes, I did.

Q Your signature appears on that paper? A Yes.

Q Did you swear to it before a Judge? A Yes, I did.

Q How much did you say was taken from your purse? A I have always said there was about 60 dollars taken from me. The rest was from my husband.

Q How much is the amount that you said was taken from your purse in that complaint?

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Sehnert - People - cross

MR. ALBRECHT: Your Honor, I will join in the offer if Mr. Direnzo wants to offer it, and the affidavit will speak for itself.

THE COURT: I will let her answer the question. What does that paper say? That is what Mr. Direnzo wants to know.

THE WITNESS: Your Honor, I think there is a little confusion because I don't quite understand which is which on the paper. That is why I was asking -

THE COURT: She doesn't understand the question. That is a sufficient answer.

Q Let me ask you this question: Were you asked by the Judge sitting in the Criminal Court before you signed and swore to that paper whether you swore to the contents of that complaint?

THE COURT: Do you understand the question, Madam? If you don't say so.

THE WITNESS: I don't understand, sir.

Q Were you asked by the Clerk of the Court or the Judge before you swore to that affidavit - you remember raising your right hand? A Yes, I do.

Q And swearing to it? A Yes, I do.

Q Were you asked whether you swore to the truth-

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fulness -- A Yes, I did. --

Q --of the allegations contained in that complaint? A Right, sir.

Q And did you say yes/ A Yes.

Q How much did you say was taken from your purse in that affidavit? A I don't remember swearing to this amount, sir.

Q Well, is it fair to state that the amount that is in the affidavit that you swore to a long time ago is different from the amount that you said was taken from your purse to this jury. A If I said that was this amount, then apparently it was.

Q So, you are making a mistake now but you didn't make one then; is that correct? A Apparently so.

Q By the way, you didn't carry any insurance coverage, did you? A Not for personal money, sir.

Q I only asked you the question. Now, incidentally, when you were at Mr. Albrecht's office the day that you say you were only told you were going to identify the defendant before the Grand Jury, in words or substance, I think that was your testimony to this jury. A Yes, sir.

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Sehnert - People - cross

Q Is that correct? A Yes, sir.

Q Are you sure there was no other conversation between you and Mr. Albrecht? A I have always testified if there was I don't remember.

Q Now, with reference to that answer, did you state anything to Mr. Albrecht that the man that allegedly robbed you said you could keep all of your papers/

A I don't remember, sir.

Q Did you also say that you could x keep your door keys, or that he took your door keys? A I don't remember this, sir.

Q And did you tell him that the man who robbed you locked your door? A I don't remember.

Q Do you recall having any conversation with Mr. Albrecht the day that you say all he said to you was that you had to identify the defendant, that the defendant said to you that he wouldn't touch your phone if you didn't want him to touch it? A I am sorry, I don't understand that sir.

Q -- Did you tell Mr. Albrecht that day that there was some conversation between you and the man who allegedly robbed you concerning the fact that he shouldn't rip out the phone? A I could have, but I don't remember

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the court; All right; proceed.

Q Did you also tell Mr. Albrecht on that day that you promised not to call the police?

THE COURT: Do you recall telling Mr. Albrecht that?

THE WITNESS: I don't recall any conversation at all, sir.

THE COURT: All right. Next question.

Q You still have no independent recollection of Mr. Albrecht writing at all? A When I am working, sir, I am so busy I don't even have time to talk to people.

Q I am not talking about your place of business. I am talking about the day you were down at the District Attorney's office. I am sorry. Did you see Mr. Albrecht with this piece of paper, People's Exhibit 6 for identification when he came to your premises the day he said he wanted to make an inspection of it? A I don't know, because if he had any papers, I didn't read or look at them.

Q Did you see him with a paper that looked like that? A All I know is, he had an envelope. This is all that I saw.

Q Did you see him make any of these pencil no-

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Schnert - People - cross

tations that appear on People's 6 for identification?

A I did not read them. He could have made them.

THE COURT: He didn't ask you that, Madam. He said, did you see him make those notations? The answer is yes or no.

THE WITNESS: No, sir.

THE COURT: All right.

Q Now, you told the jury that 60 dollars was taken from your purse; right? A Approximately.

Q When you signed the complaint you gave a high amount; is that correct? A Not that I know of.

Q But you swore to that affidavit, there is no question about that, is there? A Not from what you showed me.

Q On November 2, 1966 at about 10 p.m. how long after the perpetration of the robbery was 10 p.m. November 2.

MR. ALBRECHT: I don't understand the question.

THE COURT: I don't understand the question either. Sustained.

Q November 2, 1966, 10 p.m. was how long after you had been robbed? A About four hours, sir. Excuse me. Two hours, from eight to ten.

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M. Sehnert - for People - cross

THE COURT: Do you understand the question now?

THE WITNESS: He wants to know if I can remember things better two hours after the robbery than I can today.

THE COURT: That's right.

A No, I don't think so.

Q Well, you did speak to a Patrolman, didn't you?

A Yes.

THE COURT: When.

Q At 10 o'clock on November 2, and does the name Patrolman Schzafer refresh your recollection?

A No, sir.

Q Did you tell him a still higher amount was taken from your pocketbook? A Not that I know of, sir.

Q Let me show this to you, and I am now showing you People's Exhibit 7 for identification, and I am showing you this piece of paper with this figure (indicating) and ask you whether that refreshes your recollection two hours after the commission of the robbery? A I don't remember telling anybody that \$110 was taken from my purse

Q And If Patrolman Schafer made such an entry in the regular course of business after talking to you, he made a mistake?

THE COURT: What is your answer to that question?

MEB-2

M. Schnert - for People - cross

THE WITNESS: No.

THE COURT: If you don't understand it, you can say so.

THE WITNESS: No, he didn't make a mistake.

Q Now, Mrs. Schnert, will you be good enough to tell this jury how much was taken from you, today, your best recollection? Forget about the story you told the judge; forget about the story you told --

MR. ALBRECHT: I am going to object to this.

THE COURT: Let him finish his question.

Q Tell us now what you say was taken.

MR. ALBRECHT: Objection.

THE COURT: Sustained.

Q Would you tell us now how much you say was taken from you? 4 From my purse I would say approximately \$60.

Q When you say "I would say," does that indicate that you are not sure of the amount that was ~~xx~~ taken?

A Not the exact amount.

Q I see. Now, Mr. Wolfrath, rise.

(~~X~~The defendant rose.)

Q You told this jury, you said there was no doubt in your mind, you were absolutely positive that he was the ~~manxxxxxx~~ that perpetrated the robbery on you?

M. Sehnert - for People - cross

A That is right, sir.

Q This man Wolfrath, the defendant, as you see him standing at the counsel table, would you say he is the same size today that he was the day you say you saw him in your office on November 2, 1966?

THE COURT: I don't understand your question, Mr. Drenzo.

MR. ALBRECHT: Objection.

MR. DRENZO: Same height.

THE COURT: Size doesn't mean --

MR. DRENZO: All right, I will take your modification.

Q Same height? A Yes, sir

Q And you say he is the same size as your husband?

THE COURT: When you say size, I don't know what you are talking about.

Q Same height. I am sorry, I keep making the same mistake, and I have done that for years.

THE COURT: You are not going to make it here.

MR. DRENZO: No, I know you won't let me.

Q Tell me -- sit down, Mr. Wolfrath -- would you say he is approximately the same height as your husband?

A I would say approximately.

Q How tall is your husband? A Five seven and a half.

Mr. Sehnert - for People - cross

Q Would you say that defendant Wolfrath, the man you saw standing at the table, weighs approximately the same today as he weighed the day you say he robbed you?

A No, H he does not.

Q He weighs a lot less? A Right.

Q How much would you say he weighed on the days you say he robbed you? A I would say around 179, 180 pounds.

Q And if at that time he weighed 225 pounds, you would say you made a mistake or that he would be -- it would be the wrong man? A No, I would say I am not a good guess on weight.

Q What does your husband weigh? A I don't know what he weighs at the present time.

Q On November 2nd would you say he weighed about 175 pounds? A No, sir.

Q What did he weigh then, if you remember?

A I don't know what he weighed.

Q You did tell Patrolman Schafer that the man that robbed you stood five foot seven in height; is that correct?

A I said approximately.

Q Five foot seven? A Yes, sir.

Q And I think you said also that you fixed his height because he was the same as your husband;

is that correct? A I said he was approximately my husband's height.

Q Tell me, ~~xxxx~~ at any time during this robbery process, did you see the man who perpetrated the robbery and your husband standing in close proximity one to the other? A Yes, I did.

Q And isn't that what you predicated the height of the robber on? A Yes, sir.

Q Because the man ~~you~~ you saw in your studio was the same height as your husband? A Approximately so.

Q And that is because you saw them standing close to one another; isn't that ~~xxx~~ true, Mrs. Sehnert?

A Yes, it is.

Q And you also told Patrolman Schafer that this man weighed 170 pounds; is that correct? A I don't ever remember saying that he weighed 170. If it says I did, then I did.

Q You said he was a male white? A That's right.

Q And you said he was five foot seven?

A Approximately, yes.

Q But you don't remember saying 170 pounds, right?

A I could have said 170 pounds.

Q You said he was wearing glasses; ~~xxxxxxx~~ he didn't make a mistake about that, did he? A No, sir.

M. Sehnert - for People - cross

MR. ALBRECHT: Objection, your Honor.

THE COURT: I will allow it.

Q You said he was wearing a black raincoat?

A Yes, sir.

Q That he reported correctly? A Yes, sir.

Q As a matter of fact, do you know now that predicated on the description which you gave of the defendant after seeing your husband the robber standing close to one another, that an ~~alarm~~ alarm was sent out on the police teletype?

THE COURT: Do you know that of your own knowledge?

Q I say do you know it now? A No, I do not know.

Q But you do know that an alarm was broadcast?

A No, I did not know.

Q ~~It~~ Police never told you that? A No, sir.

Q Tell me, you testified also on direct examination that the gun that you saw was a blue, of a blue substance; did I understand you correct? A A bluish metallic.

Q A bluish metallic substance? A Yes, sir.

Q And I take it all you saw was the barrel of the gun? This would be the barrel. This would be the chamber. ~~x~~ This would be the trigger. (indicating).

M. Sehnert - for People - cross

A I could see the barrel and the chamber, sir.

Q Right, and this gun you say you saw was similar to People's Exhibit 2 in evidence? A Yes, sir.

Q This gun? A Yes, sir.

Q Would you say that this was a blue metallic substance? A I would say it has a bluish silver metallic --

Q Now ~~xi~~ wait a minute. You are telling us now bluish silver? A There is such a color, sir, as bluish silver.

Q I know there is, but you never said there was a bluish silver. A A bluish metallic color.

Q Is this bluish metallic or is it bluish silver? A To me it's bluish metallic color.

Q You say now ~~x~~ as you see it that it's a bluish metallic substance? A That's right.

Q Tell me, aren't you in fact saying that People's ~~x~~ Exhibit 2 in evidence, this revolver that I hold in my hand --

THE COURT: It's not in evidence. It's for identification.

Q -- for identification, this revolver that I hold in my hand, is similar to the one that you say you saw on

Sehnert - for People - cross

November 2, 1966 because somebody told you it was the gun?

A Absolutely not, sir.

Q Are you telling this jury that the police never told you that this was the gun allegedly used in that robbery? A In our robbery?

Q I am asking you just that. A I was not told that it was the gun that was used in our robbery. It's a similar gun.

Q And you remember that it was bluish metallic?

A Right, sir.

Q And this is bluish metallic to your eye?

A To my eye it is.

Q I see. And did you recognize it as a short barreled gun at that time? A Did I recognize it as a short barreled gun at that time?

Q Yes. A At the time of the robbery?

Q Yes. A Yes, sir.

Q Did you recognize it as a Colt? A I don't know the makes of guns, sir.

Q Did you recognize it as having a broken grip?

A No, sir.

Q By the way, do you know whether this gun works?

A No, sir.

EX

M. Sehnert - for People X - cross

Q I am only asking you if you know. A No, sir.

Q All right, I just asked you. Now, you testified on direct examination by Mr. Albrecht that you saw money taken from, I think your answer was, quite a number of bills, taken from Mr. Greenwald. Was that your testimony on direct examination? A Yes, sir.

Q How much was it?

THE COURT: ~~XXXXXX~~ If you know.

Q If you know.

THE COURT: If you know, tell him.

A I only know what I was told.

THE COURT: All right.

A I was told by Mr. Greenwald that it was around \$300.

Q When did Mr. Greenwald tell you that?

A Right after the robber had left.

Q Incidentally, did you testify before the grand jury that you were lined up against the wall?

MR. ALBRECHT: Objection. He knows the proper form of that question.

MR. DIRENZO: Withdraw the question. I will do it the slow way.

MR. ALBRECHT: Do it the right way.

THE COURT: All right, counsel, I asked you not to

M . Sehnert - for People - cross

make any remarks. That goes for you, Mr. Albrecht, as well as it goes for your adversary.

MR. ALBRECHT: I understand, your Honor. I am trying to adhere to that.

THE COURT: Well, try a little harder.

Q Mrs. Sehnert, was this question put to you and did you make the following answer, and was the answer made by you to the question truthful:

"Q Will you tell us what the defendant did and what the customers and your husband did in that studio?

"A Well, the defendant told the customers and me to line up in my receptionist room against the wall, which we did, and asked me if there was anybody else there, and I told him yes, there was."

Was that question put to you? A Yes, sir.

Q Did you make that answer; was the answer truthful?

A I was not lined up until later, sir.

Q So that I take it it is your testimony that while this answer is true, you were lined up towards the end? A Yes, sir.

Q Is that your answer? Now, on direct examination Mr. Albrecht asked you whether the defendant staggered, and I believe your answer was he did not, right? A Right.

Q At any point during this robbery, what is

M. Sehnert - for People - cross

^s
the closest that you were to the defendant? A The closest was about three feet.

Q Isn't it your testimony, Mrs. Sehnert, that you did in fact smell his breath?

MR. ALBRECHT: Objection. That was not the testimony.

THE COURT: I will allow it; overruled. Read the question again, Mr. Reporter.

(The last question was read.)

THE COURT: Is that your testimony, that you smelled his breath?

MR. DIRENZO: The testimony was, if your Honor will permit me --

MR. ALBRECHT: I will object to this ~~xxx~~ statement.

MR. DIRENZO: I will withdraw it. I thought I was answering the Court's question.

THE COURT: Is that your testimony now, the question he is asking you?

THE WITNESS: You are asking me if I smelled his breath?

Q Yes. A Not that I know of. I wasn't deliberately doing it.

Q Of course not. You didn't smell his breath; is that correct? You were never that close to him?

M. Sennert - for People - cross

A I was within three feet.

Q So there will be no question about it, will you tell the jury that you did or did not smell his breath?

A No.

Q And when Mr. Albrecht asked you whether you smelled alcohol, did you smell alcohol, your answer was no; is that correct? A Right.

Q But you were never close enough to smell his breath? A But I didn't smell any alcohol.

Q And yet you ~~xxx~~ were never close enough to smell his breath; is that right? A Right.

Q You didn't smell gasoline either, did you? A No.

Q You said he did not act irrationally? A No.

Q Will you tell the jury what you mean and what you understood by the question put to you by Mr. Albrecht, did he not act irrationally? A My interpretation was that he simply knew what he was doing.

Q Tell me, before you testified here today --

A Yes.

Q -- did you have any conversation with Mr. Albrecht or anybody in the District Attorney's office or anybody in the Police Department connected with the prosecution or investigation of this case?

THE COURT: Did you have any such conversation with

M. Sehnert - for People - cross

anyone?

A I don't recall any.

THE COURT: You mean you don't recall having spoken to Mr. Albrecht or any of his office?

THE WITNESS: Yes, of course I have spoken to him, of ~~xxxxx~~ course.

THE COURT: That is the question he asked.

Q I am talking about today, today, hours ago.

A Yes, I have talked to them.

Q What time? A This morning.

Q Will you tell me what time this morning?

A Between 9:30 and 10.

Q Not after that? A Yes.

MR. ALBRECHT: With whom, with myself or with other officers?

Q I said the District Attorney, Mr. Albrecht, any police officers, any detective, any assistant District Attorney, anybody connected with the investigation of this case. A Yes, between 9:30 and around one.

Q About what? A Between 9:30 and one.

Q Between 9:30 and one o'clock? A Yes, sir.

Q Did I understand you ~~xxx~~ to tell this jury before it was between 9:30 and 10? A No, I misunder-

M. Sehnert - for People - cross

stood your question.

Q I misunderstood your answer then. A I had been with and spoken to people ~~xxxx~~ between 9:30 and one today.

Q Did anybody connected with the investigation of this case tell you in substance the statement that I made, the opening statement that I made to this jury? ~~xxxxxx~~

~~xxxxxx~~ THE COURT: Do you understand his question?

A I don't know what you said to the jury.

Q I asked you a simple question: Did anybody tell you, connected with the investigation of this case, what I told this jury in words or substance, abbreviated, thumbnail, meticulous particularity, detail or otherwise?

THE COURT: Answer either yes or no.

A No.

Q Did anybody tell you, Mrs. Sehnert, that among other things the defendant's defense in this case is that he was intoxicated?

THE COURT: When, today?

MR. DIRENZO: On November 2nd or prior thereto.

THE COURT: No, when did you make these statements, today?

MR. DIRENZO: Today.

THE COURT: All right. Anybody tell you that

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he said that, Mr. Direnzo?

THE WITNESS: No.

THE COURT: All right.

(Continued on page 273.)

M. Sehnert - for People - Cross

Q You are sure about that, Mrs. Sehnert?

MR. ALBRECHT: Objection.

THE COURT: Sustained, that is argumentative.

Q Well, suppose you think about the answer and let me know whether you want to change that answer.

MR. ALBRECHT: Again objection.

THE COURT: Sustained.

Q Had you at any time from November 2, 1966 until today ever been asked a question by anybody, a detective, District Attorney's representative or otherwise as to whether or not you had ever smelled alcoholic breath on the defendant? A If I was I don't remember being asked that.

Q Is it fair to state that you can never recall having been asked that question in all the months in two years that the case has been pending, is that correct?

A I don't recall being asked.

Q Today is the first time that you were asked that question and it was after two o'clock, is that correct?

A I was asked if he was drinking?

Q You were asked today from this witness stand whether you smelled alcoholic breath. A Yes, I was asked and I said no.

M. Sehnert - for People - Cross

Q And this was the very first time you have ever been asked that question? A As far as I remember.

Q And you were with District Attorney's representative from 9:30 this morning until one o'clock this afternoon?

MR. ALER HT: I object to the District Attorney's representative.

THE COURT: Sustained, she didn't say that.

Q Police officers, is that correct?

A I was with police officers, yes.

Q Detective Spano? A I don't know his name.

Q Do you know any of the names of the detectives, Hanford? A Hanford is the only one that I have heard.

Q And when you talked with him did he suggest anything to you about intoxication? A No, sir.

Q Insanity? A No, sir.

Q Did he mention the words, defense of insanity to you? A (No answer).

Q Never heard it before? A (No answer).

THE COURT: Don't shake your head.

THE WITNESS: No, sir.

Q You said the entire transaction took about

M. Sehnert - for People - Cross

eight minutes, correct? A Yes, sir.

Q And you observed the defendant for six or seven minutes? A Yes, sir.

Q So that you had more than ample opportunity to evaluate his height, correct? A Yes, sir.

Q And you had more than ample opportunity to evaluate the weight? A Yes, sir.

Q Incidentally, only because you were asked a question as to whether you say the man did or did not act irrationally, is it your opinion as a lay person that a man who commits a robbery commits a rational act?

MR. ALBRECHT: Objection.

THE COURT: Sustained; the jury will disregard the question because questions in and of themselves are not evidence in this case; that is what I mean to say. It is only answers to questions which are evidence.

Q It was your testimony, if I am incorrect you correct me, that whatever you said to the man that robbed you, anything you said to him to do, he did, he followed your instructions, is that correct? A Yes, sir.

Q In other words, you said to him: Don't touch the phone, he didn't touch the phone? A Yes, sir.

Q Please let me call my husband in, he let you

M. Sehnert - for People - Cross

call him in? A Yes, sir.

Q Let me get my son in, he let you call him in?

A Yes, sir.

Q Let me call in my customer, he let you call him in? A I didn't call a customer in.

Q In other words, all I am trying to point out is that this man with a gun in his hand, robbing you, an act of violence, was following every command you gave him, is that correct?

MR. ALBRECHT: Objection, the question as to command.

THE COURT: Sustained.

Q Well, let us put it this way; he did everything you told him to do, correct?

MR. ALBRECHT: Objection, telling him to do.

Q Well, is there anything he didn't do --

THE COURT: I will sustain it.

Q -- that you asked him to do?

THE WITNESS: Do I answer that?

THE COURT: Yes.

A No.

Q What was that? What didn't he do? A You said was there anything that I asked him to do that he didn't do.

M. Sehnert - for People - Cross

Q Yes. A No, he did everything I asked him to.

Q That's it. Now there came a time when you went to Bellevue Hospital? A Yes, sir.

Q And I think you told the jury that you went to Bellevue Hospital as a result of a telephone call that you received from Detective Hanford? A Yes, sir.

Q And Detective Hanford reached you at your home, not at Stuyvesant Oval but in the country, is that correct? A Yes, sir.

Q And that was on a Sunday? A Yes, sir.

Q Spoke to you individually? A I don't remember talking to him.

Q It is a fact, is it not, and I want you to search your recollection, that he spoke to both you and to your husband? A This is possible but I don't remember it.

Q Do you recall the conversation between you and Detective Hanford on the telephone?

MR. ALBRECHT: Objection, answered already three times.

THE COURT: Overruled. You may answer the question, Madam.

THE WITNESS: I don't remember speaking to him on the

M. Sehnert - for People - Cross
phone.

Q Is it your testimony now, Mrs. Sehnert, that you do not recall speaking to Detective Hanford on the telephone?

MR. ALBRECHT: Your Honor, can I object to that, please?

THE COURT: Overruled. Is that your testimony, Madam?

THE WITNESS: I don't remember speaking to him.

THE COURT: All right. That is your present recollection.

THE WITNESS: That is my present recollection.

THE COURT: All right. Next question.

Q Do you remember testifying under oath on February 29, a few days ago, 1968? A Yes, I remember testifying.

Q Was this question put to you and did you make the following answer:

"Question: Now would you be good enough to search your recollection and your memory and tell us if you can the exact language if possible that Detective Hanford said to you with reference to your going over to Bellevue Hospital? Answer: He just told me that they had

M. Sehnert - for People - Cross

somebody there that they wanted us to look at."

Now did you make that answer to that question?

A I probably did. In saying me, it could mean either my husband or me.

Q And it is your testimony now that you cannot in fact say that you had such a conversation with Detective Hanford? A My husband or I did, no.

Q Is it possible that you both spoke to him?

A This is possible but I don't remember it.

Q When you went to the hospital you did go there together with your husband, right? A Yes, with my husband.

Q And you met Detective Hampton at Bellevue?

A That's correct.

Q And you went up to K-2? A We went up to a corridor, I don't know where it was.

Q Then you went upstairs? A Yes, we did.

Q When I say you went upstairs that means you, Detective Hanford and your husband. A That's correct.

Q And when you went upstairs you saw Detective Hanford walk over to the defendant? A Yes, sir.

Q There was a police officer there at that time

Q Was your answer to him
"immediately"?

A Yes, I said, "immediately."
I asked a particular question.

Q Where you asked this question
after your answer, page 108. "Well,
that you first saw the defendant
before you actually approached him
You mean at the hospital? Question
"immediately".

A Yes, I said, "immediately".

Q Did you say, I said, "immediately".

Q And you make those answers

A Apparently I did if you have it

Q That was on the 29th, what
you don't recall? A I don't recall
tion, no.

Sehnert - People - cross

Q Was this question put to you and did you make the following answer: Question: Within a minute or two? Answer: That's right". Did you make that answer to that question? A Yes, I think I did.

Q Was it truthful? A Yes.

Q Incidentally, when Detective Hanford approached the defendant, did he have a gun in his hand Detective Hanford? A Not that I know of.

Q Did he have handcuffs in his hand? A Not that I saw.

Q Have a book in his hand? A Not that I saw.

Q See any writing paraphernalia? A Not that I know of.

Q Any reading paraphernalia in his hand? A This I don't know, either.

Q As a matter of fact, your testimony was that you could not truthfully testify that they were even in conversation?

THE COURT: Sustained as to form. Objection sustained as to form.

Q Was this question put to you and did you make the following answer, page 108. "Question: Now tell me, at any time, did you see him either observing his lip movements or otherwise engaged in any conversation

3 Sehnert - People - cross

lip movements or otherwise engaged in any conversation with the defendant? Answer: Detective Hanford's back was towards me. I couldn't have seen any lip movement to begin with". Did you make that answer to that question? A Yes, I did.

Q So that as far as you are concerned, is it fair to state that you cannot say with any reasonable degree of certainty that there was any conversation between Hanford and the defendant? A I couldnot tell.

Q Was this question put to you and did you make this answer, page 109. "question: But you did see the defendant after Hanford approached him within one minute; correct? Answer: Right." A Yes.

Q That ~~was~~ answer was truthful? A Yes.

Q So that between the time that Detective Hanford walked to the defendant and you approached the defendant, approximately one minute elapsed? A It couldn't have been less. It could have been more.

THE COURT: We will suspend now until tomorrow morning. Gentlemen of the jury, you are admonished not to discuss this case amongst yourselves nor permit anyone to discuss it with you. You are not to come to any conclusion concerning the case until it is finally submitted to you. Be here tomorrow morning at 11 o'clock.

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PEOPLE V. WALTER WOLFRATH

COURT REPORTERS' MINUTES

OF

MARCH 7, 1968

People v. Walter WolfrathTRIAL CONTINUED

100 Centre Street
New York, N.Y.
March 7, 1968

B e f o r e :

HON. GEORGE POSTEL, J.S.C.,

and a Petit Jury.

APPEARANCES: (Same as previously stated)

- - -

THE CLERK: People of the State of New York against Walter Wolfrath. The defendant is present, his attorney is present, Mr. Dierenzo, the Assistant District Attorney Mr. Albrecht is present.)

(Whereupon the clerk took the jury attendance.)

THE CLERK: All present.

THE COURT: The witness is still on cross-examination. MARION EVEYLYN SEHNERT, being duly recalled, resumed, and testified as follows:

THE COURT: You may proceed, Mr. Dierenzo.

CROSS-EXAMINATION BY MR. DIRENZO (CONTINUED):

Q Mrs. Sehnert, before you went to Bellevue Hospital on November 6, 1966, did Det. Hanford exhibit any photograph to you of the defendant Wolfrath? A Yes. Not of the defendant, but we looked at mug shots.

M. Sehnert - for People - Cross

Q I asked you, Mrs. Sehnert, whether you saw a photograph of the defendant. A No, sir.

Q There did come a time subsequent to the commission of the robbery that you went down to the Bureau of Criminal Identification and you did examine what you describe as mug shots -- A Yes, sir.

Q -- is that correct?

And among the photographs that were shown you at that time can you tell this jury with any reasonable degree of certainty whether you did or did not see a photograph of the defendant? A When we went to look at these shots, sir?

Q Yes. A No, we did not see any of this defendant.

Q Now, inviting your attention to the morning of November 6, 1966, at that time, up to that time, had you been shown any photograph of the defendant?

A No, sir.

Q In other words, before going to the hospital you did not see a photograph of the defendant? A No, sir.

Q Now, again, with reference to your meeting with Det. Hanford on November 6, 1966, did you have any

M. Sehnert - for People - Cross

conversation with him, without-telling me what the conversation was, before going up to the hospital floor on which the defendant was confined? A No, sir.

Q Now, you knew, of course, that you were going to the hospital to view an individual; is that correct?

A Yes, sir.

Q And you didn't know whether he was or was not the individual who perpetrated the robbery on you on November 2nd? A That's right, sir.

Q Did Det. Hanford or anyone else state to you prior to your seeing the defendant at the hospital that either the Police Department or he had an individual in the hospital who answered the description of the man who allegedly robbed you? A No, sir.

Q Did Det. Hanford state anything to you at any time about description of the man in the hospital?

A No, sir.

Q Are you certain about that, Mrs. Sehnert?

A As far as I recall, he said he had somebody there that he wanted us to look at.

Q He said nothing about the man's description, and didn't say, and he didn't say to you, "We have a man who we think answers the description"? A As far as

M. Sehnert - for People - Cross

I recall, no.

MR. DIRENZO: Incidentally, is Mr. Don Sehnert here, please, Mr. Albrecht?

MR. ALBRECHT: Is 'n the building at the present time?

MR. DIRENZO: May I have him available, your Honor? I would like him brought into the courtroom at this time.

THE COURT: Is he here?

MR. ALBRECHT: He is not here, no.

THE COURT: He is not here right now. He will be here.

MR. ALBRECHT: If you want to subpoena him you can.

MR. DIRENZO: I will address my comment to the Court. Will it be necessary for me to subpoena him?

THE COURT: No, sir. I will direct that he produce him.

MR. DIRENZO: Would your Honor direct he be produced while Mrs. Sehnert is on the witness stand please?

THE COURT: I don't think that is necessary.

M. Sehnert - for People - Cross

MR. DIRENZO: I want a confrontation while Mrs. Sehnert is in the witness chair.

MR. ALBRECHT: Your Honor, I can't see how he can examine two witnesses at once.

THE COURT: Step up.

(Off the record at the bench among the Court, Mr. Drenzo and Mr. Albrecht.)

(The Court conferred with the witness at the bench off the record)

(Whereupon the witness left the courtroom)

(Witness returns to the courtroom)

THE COURT: All right. Proceed, Mr. Drenzo.

BY MR. DIRENZO:

Q So that if I understand your testimony correctly, Mrs. Sehnert, you received a telephone call at your summer place on the Island, is that correct, on a Sunday~~XXXXXXXX~~, from Det. Hanford? A Yes, sir.

Q And all he said to you was "Will you come down ^{you} from the country, we want/to look at somebody"? A I don't recall talking to him, sir.

Q Basically~~/~~isn't that what your testimony has been? A Yes, sir.

Q The detective said this either to you or to your

M. Sehnert - for People - Cross

husband, if I understood your testimony correctly? A Yes, sir.

Q All he said was "Come down. We just want you to look at somebody"? A That's right, sir.

Q Now, you testified here yesterday and up until last night. After leaving the witness stand here yesterday did you discuss your testimony with anyone after leaving the witness stand yesterday? A No, sir, I was much too exhausted.

Q I'm sorry if I contributed to that. But I just wanted that one answer. You did not discuss your testimony? A No, sir.

Q With your husband? A No, sir.

Q You did not discuss it with any one of the detectives and you did not discuss it with anyone in the district attorney's office? A I made one remark to my husband, "Prepare to be ground up like hamburger." That was all. Nothing else.

Q I feel like a butcher. A I'm sorry.

THE COURT: Strike those remarks out from the record.

Q One other question. And I will stop grinding. At any time before you testified yesterday were you a

M. Sehnert - for People - Cross

spectator in this courtroom? Yes or no. A Have I been in this courtroom before yesterday?

Q Before you testified yesterday -- I'm talking about yesterday -- were you at any time a spectator in this courtroom? Yes or no. Were you sitting in the courtroom at all? A I was in a courtroom. Not sitting around there.

Q I am interested in whether you were sitting in this courtroom. That's all, Mrs. Sehnert. A I was in a courtroom. I don't know if it was this one or not.

Q Were you seated in the courtroom that you were seated in -- were you seated in the last row? A No, sir. I was seated up here.

Q I am not talking about while you were a witness. A I've never been in a courtroom and seated.

Q In other words, you didn't hear any proceedings except when you were yourself a witness on ~~the~~ the witness stand; is that correct? A That's right.

MR. DIRENZO: That is all I want to know. I have no further questions.

REDIRECT EXAMINATION BY MR. ALBRECHT:

Q Mrs. Sehnert, I think Mr. Direnzo referred to this document here --

M. Sehnert - for People - ~~THE~~ Redirect

THE COURT: Please refer to it by identification number.

Q Exhibit 5 for identification. You read from that for Mr. Direnzo, did you not, on direct examination? You recall that, don't you? A Yes.

Q Did you go to a clerk or something in the Criminal Court and the man typed it out and you went into the Criminal Court and you testified, you swore to that item? A Yes, sir.

Q That was the item that you just read from earlier, yesterday, is it not? A Yes, sir.

MR. ALBRECHT: I will offer it in evidence.

MR. DIRENZO: Number one, if your Honor pleases, before he offers this in evidence, I will ask him to produce the original. First of all, it's not the best evidence.

MR. ALBRECHT: Will Mr. --

MR. DIRENZO: I am not saying I am not going to object to the original.

MR. ALBRECHT: If you are going to object to the original, why don't you make your objection now and we can clarify it.

THE COURT: Please, counsel.

M. Sehnert - for People -~~XXXXXX~~ Redirect

MR. DIRENZO: If your Honor pleases, addressing your Honor --

THE COURT: He has a perfect right to object to a photostat going in. That is not the best evidence.

Q I show you this item --

THE COURT: Just take the sheet you want to show her.

MR. ALBRECHT: May ~~IM~~ I take the paper apart, Judge?

THE COURT: Yes.

(Mr. Albrecht separates papers)

Q I show you previously marked Exhibit 5 for identification.

MR. ALBRECHT: May we have that 5A for identification?

(Original complaint marked People's 5A for Identification.)

MR. DIRENZO: May I examine on the voir dire?

THE COURT: Sure.

MR. ALBRECHT: Is there an objection to the offer?

THE COURT: You are offering it in evidence; right?

MR. ALBRECHT: Yes.

THE COURT: He has a right to have a voir dire examination. That is the rule. There is nothing unusual.

M. Sehnert - for People - Voir Dire

EXAMINATION ON THE VOIR DIRE

BY MR. DIRENZO:

Q You saw a photostat of this original paper yesterday -- I am now talking about --

MR. DIRENZO: Has it been marked?

THE COURT: 5-A for identification.

Q -- People's Exhibit 5-A for identification?

A Yes, sir.

Q That is the original paper that you signed; is that correct? A Yes, sir.

Q That is the paper, the contents of which you swore to under oath before Judge Canuto on November 14th; is that correct? A Yes, sir.

Q In that paper --

THE COURT: Sustained.

Q When you swore -- I am not talking about the entire contents of the paper -- there is -- Question withdrawn.

On that day before Judge Canuto did you swear under oath that you gave the defendant \$80?

MR. ALBRECHT: Objection.

THE COURT: Sustained.

All you can do is inquire about whether or not she

M. Sehnert - for People - Voir Dire
signed that document. Then when he offers it in evidence
you can cross-examine her as to the value or weight
that document should have.

A Yes, sir.

(Continued on following page)

M. Sehnert - for People - voir dire

MR. ALBRECHT: I move to strike that answer.

THE COURT: Strike that answer. That/~~isn't~~ voir

dire. The purpose of voir dire is not a cross examination. That is to prove the authenticity of the documentx being offered. That's all.

MR. ALBRECHT: Is that answer stricken, your Honor?

THE COURT: Sure the answer is stricken.

MR. ALBRECHT: Thank you.

MR. DIRENZO: Now, if your Honor pleases, I object to the receipt of this document in evidence, and I only do it for one reason.

THE COURT: All right, step up.

MR. ALBRECHT: Your Honor, if he objects, I withdraw the offer. If he objects to it I will withdraw the offer.

MR. DIRENZO: Now, if your Honor please --

THE COURT: No speeches, Mr. Direnzo.

MR. DIRENZO: Well, I want to state something for the record, if I may. If you tell me to do it side bar I will do it side bar.

THE COURT: Do it side bar.

(The following took place at the bench out of the hearing of the jury:)

MR. DIRENZO: I did not offer this in evidence when I cross examined her.

M. Sehnert - for People - voir dire

THE COURT: No, he is offering it.

MR. DIRENZO: I know it, but I want your Honor to know the basis for my objection now, and his magnanimous offer to withdraw ~~it~~ it as ~~an~~ an exhibit now.

THE COURT: You object so I am going to sustain your objection.

MR. DIRENZO: I want to show why. What he just did I think is improper. Number one, I only questioned her with reference to the amount that was taken. That was the only purpose.

MR. ALBRECHT: He asked ^{her} to read it.

THE COURT: Let him finish, Mr. Albrecht. Go ahead.

MR. DIRENZO: In seeking to offer this in evidence, he is ~~going~~ doing it for two reasons: Number one, we know that this document talks about an identification made by this woman. That was not the urpose for which I used this document, and he knows it. In the first place, offering it for that purpose would be highly improper.

MR. ALBRECHT: Judge, let me just state this --

THE COURT: You questioned her about this document, and the contents thereof.

MR. ALBRECHT: That's right. If you don't want it in, I will withdraw the offer. That's all.

MR. DIRENZO: I say he shouldn't have offered it

M. Sehnert - for People - redirect
in the first place.

MR. ALBRECHT: I won't offer it.

MR. DIRENZO: I say he shouldn't have offered it.

THE COURT: All right, application to withdraw is granted. He can do it whenever he wants to. He can submit any paper he wants for evidence, and you have a right to object thereto, and counsel has a right to withdraw it. All right.

REDIRECT EXAMINATION BY MR. ALBRECHT (continued):

Q Now, Mr. Drenzo asked you several questions and ~~referred~~ referred to the term "grand jury." Would you please tell the Court what is the grand jury, where is the grand jury?

MR. DIRENZO: Objected to, if your Honor pleases.

THE COURT: Overruled.

MR. DIRENZO: Respectfully except.

A I was at the grand jury.

Q Where is the grand jury? A Here.

Q Would you point to the grand jury?

A Right here, sir (indicating%).

Q That is your understanding of it? A That is my understanding.

MR. ALBRECHT: May the record indicate that she

M. Sehnert - for People - ^{recross}~~redirect~~

is the grand jury, but I have been in court before on this case, sir.

Q I talked to you about testimony ~~if~~ you offered before a grand jury, not to this petit jury. Weren't we talking about the testimony -- if you didn't understand me you should have said it.

MR. ALBRE_CHT: Objection to that, your Honor.

THE COURT: Overruled.

Q I had asked, and that was on my ~~immediate~~ immediate cross examination, whether you had made any statements to the District Attorney and whether you had testified before a grand jury and your answer was that you had; isn't that correct? A That I had testified before a grand jury?

Q Wasn't that your answer? A Yes.

Q As a matter of fact, were you not shown a copy of your grand jury testimony? As a matter~~xxxx~~ of fact, didn't we ~~ask~~ ask you questions from the testimony that you offered before the grand jury only yesterday?

A I believe you are correct.

Q So are you telling us that when you were making reference to a grand jury you meant this jury, or did you mean some other body of men? A Where I testified

M. Sehnert - for People - recross

before was not a body of men. _

Q ~~What~~ What was it? Tell us what was it?

THE COURT: When was the first time you testified in this case?

THE WITNESS: It was ~~was~~ before you, s i.

THE COURT: That was the only time you testified in this case is just before me?

THE WITNESS: Yes, sir, and yesterday and today.

THE COURT: On no other occasion?

THE WITNESS: No, sir.

Q Mrs. Sehnert, would you say you have a good memory?

MR. ALBRECHT: Objection.

THE COURT: I ~~will~~ will allow it. Overruled.

May we have an answer to that question, Mrs. Sehnert? He asked you if you say you have a good memory?

A One can have a good memory in some areas and not in others.

Q And is it fair to state that your memory is good in some areas and bad in others? A I think that's the rule with most people.

Q The first time, consonant with your best memory, your best recollection, you ever testified before a jury, grand jury or otherwise, your testimony offered in this

M. Sehnert - for People - recross
courtroom before this body of-me? A I have testified before. This is what I told you.

Q I am just trying to find out where and when.
BY THE COURT:

Q Let me ask you this question, and I will try and make myself clear. When for the first time were you sworn as a witness and asked to testify in this particular matter? When for the first time were you sworn as a witness, took the witness stand, and testified in this matter? A It was before yesterday, your Honor.x

Q Before yesterday? A Yes, sir.

Q And when was that, if you can recall? Was it before a particular court in session or something other proceedings? A I am still confused, Judge. I am sorry.

Q All right. You testified yesterday? A Yes, sir.

Q And you are testifying today? A Yes, sir.

Q When for the first time before yesterday or today did you testify in court?

MR. ALBRECHT: In court?

THE COURT: Yes.

A It was just a few days before.

M. Sehnert - for People - redirect

THE COURT: All right.

DIRENZO:

MR. ~~REBENZT~~: So now that we --

THE COURT: Let me finish this so we get this straight.

DIRENZO:

MR. ~~AZBZZZHTz~~ I am sorry.

BY THE COURT:

Q So you testified in this matter a few days before you came here yesterday; is that right?

A That's right, sir.

Q Did you ever testify before that time?

A No, sir.

Q So that the first time you testified in these proceedings was several days ago; is that right?

A Yes, sir.

Q And this is the second time? A Yes, sir.

Q That you have testified in these proceedings?

A Yes, sir.

THE COURT: All right.

RE CROSS EXAMINATION BY MR. DIRENZO (continued):

Q On February 23, 1967 did you testify before any body or tribunal in connection with this case? A In the year of '67? This is '68. No, sir.

Q You did not? A No, sir.

Q No question about it. You told us that you

went to the [redacted] and you saw the defendant? A. Yes, Sir.

Q. You were with your husband, and you saw Detective Haffner? A. That's right.

Q. And you said there was no [redacted] is that correct? A. I said there was [redacted]

Q. That's what I understood you to say. If I am in error -- A. I said I didn't see [redacted] tion.

Q. Right, and then it is your testimony in answer to a question put to you by Mr. Albrecht a few minutes ago, you saw your husband [redacted] pointing to the defendant, "That's him," or "That's the man?"

MR. ALBRECHT: Objection. That was not her testimony.

THE COURT: Several minutes ago you said

MR. DUFF: Yes.

THE COURT: I will sustain that. That is not her testimony.

MR. DUFF: All right.

(Continued on Page 106).

Schnert -People - recross

THE COURT: I'll allow it. Overruled.

Q Didn't you testify, in answer to --

THE COURT: I didn't get an answer to that question.

MR. DIRENZO: All right.

Q Will you answer it now, please? A May I have the question, please?

THE COURT: Read the question, please.

(Whereupon, the following question was read by the reporter: "And the defendant looked at you and said "I did it"?)

A That's right.

Q There wasn't a single word about the commission of this alleged robbery on November 2d; is that correct?

A That's correct.

MR. ALBRECHT: Objection, your Honor. By whom?

THE COURT: Overruled.

Q Was there a single word uttered about this robbery by anybody?

MR. ALBRECHT: If she knows.

THE COURT: In your presence.

A Not in my presence, sir.

Q Well now, ~~ex~~ let me ask you something. The defendant -- question withdrawn.

Sehnert - People - recross

The detective entered the hospital with you, correct? A Right.

Q He entered the hospital with your husband?

A Right.

Q You were left in the corridor facing the wheelchair, and I think you said it was several feet away; is that correct? A I was not facing the wheelchair, sir.

Q So you weren't facing the wheelchair? A Right.

Q But you were together with your husband? A Right.

Q The entire proceeding in the hospital took how many minutes? You tell us now. A The entire proceedings, from the time we got there?

Q From the time you got to the floor and the time you left? A From the time we got there and the time we left, it could have been approximately five minutes.

Q Now, how many of those minutes did you spend with the -- in the presence of the defendant? A No more than two.

Q And when you spent these two minutes in the

Sehnert - People - recross

presence of the defendant, there was no conversation, except that you said, or your husband said, or both of you said, "That's him," and the defendant said "I did it"? A That is correct.

Q Is that all of the conversation, or all of the utterances that were made at that time? A That is all that I heard, sir.

Q But you were present with the detective, your husband, and the defendant; is that correct?

A But not all of the time.

Q Well, what period of time weren't you there?

A When the detective went over to the defendant. I was not there originally when he walked over to him.

Q Right. And your husband wasn't there either?

A No.

MR. DIRENZO: I just have that -- I'm through with this witness except for that.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. ALBRECHT:

Q Mrs. Sehnert, after you came down to court originally on this case, where you swore to that complaint, which we referred to before, did there come a time after that that you came down to the District

Sehnert - People - recross

Attorney's office with a detective, not to see me, but you came down to the District Attorney's office with a detective?

MR. DIRENZO: I object to the form of this question.

THE COURT: I'll allow it. Overruled.

Q If you recall. A If you're speaking of when I came to court before --

Q No, I'm not referring to court. I'm referring when you came to the District Attorney's office. A (No response.)

Q If you don't remember, you don't remember.
A (No response.)

Q You don't remember? A (The witness shook her head in the negative.)

Q Okay.

MR. ALBRECHT: All right, your Honor.

THE COURT: All right.

Have you another witness now?

MR. ALBRECHT: Yes, sir.

THE COURT: All right.

Please remain within call now, Ma'am. We can't --

THE WITNESS: You want me to remain in the back-room, Judge?

Sehnert - People - recross

THE COURT: Yes, surely.

MR. ALERECHT: Your Honor, would you admonish the witness she's still on the stand?

THE COURT: Yes, sir.

Please do not discuss this case with anyone.

THE WITNESS: Yes.

(Whereupon, the witness was temporarily excused.)

MR. ABBRECHT: Patrolman Emburey.

MR. DIRENZO: May we approach the bench, your Honor?

THE COURT: Yes, sir.

(Whereupon, counsel for both sides approached the bench, and there was a discussion had off the record among the Court and counsel for both sides, out of the hearing of the jury, after which the following was put into the record in open court:)

THE COURT: Yes, sir, are we calling Patrolman Emburey?

MR. ALBRECHT: Yes, sir.

PATROLMAN JAMES EMBUREY,
called as a witness in behalf of the People,
shield 3170 10th Precinct, Police Department of
the City of New York, having been duly sworn by
the Clerk of the Court, testified as follows:

AFTERNOON SESSION

(TRIAL RESUMED)

(Mr. Albrecht, Mr. Durenzo, and the defendant are present in court.)

THE CLERK: People of the State of New York against Walter Wolfrath.

The defendant is present; his attorney, Mr. Durenzo, is present; Mr. Albrecht is present.

(The jurors and alternate jurors are present in court, seated in the jury box.)

(The Clerk calls the names of the jurors and alternate jurors, and all answer present.)

THE CLERK: All present.

M A R I O N E. S E H N E R T, resumed the witness stand and testified further as follows:

CROSS EXAMINATION

CONTINUED BY MR. DIRENZO:

THE COURT: All right, Mr. Durenzo, you may proceed.

ATTENDANT: You are still under oath.

Q. Mrs. Sehnert, you testified yesterday and predicated the height of the robber with your husband. Is that correct? A. Yes, sir.

Q. And you testified yesterday to this jury that there came a time when the man that you say robbed you

M. Sehnert - People - Cross

and your husband were close to one another, and you could see them standing together. Is that correct?

A. Yes, sir.

MR. DIRENZO: (addressing defendant) Mr. Wolfrath, come over here.

THE COURT: With the Court's permission.

MR. DIRENZO: With your Honor's permission.

Again, I thought that I made that point clear, your Honor, before.

THE COURT: You just said, "Mr. Wolfrath, come over here". You have got to ask the Court to do that, because I may not want him to do it.

MR. DIRENZO: With your Honor's permission.

THE COURT: What do you want him to do?

MR. DIRENZO: I would like to have the defendant stand here. (indicating)

THE COURT: Yes.

(The defendant comes forward and stands on front of the jury box, as indicated by Mr. Drenzo.)

MR. DIRENZO: And I also want Mr. Sehnert to ~~SEHNERT~~ stand alongside of him.

THE COURT: Is Mr. Sehnert here?

MR. SEHNERT: Yes.

M. Sehnert - People - Cross

THE COURT: Will you give your name for the record, please?

MR. SEHNERT: Don Sehnert.

THE COURT: Will you step over here, next to Mr. Direnzo?

(Mr. Don Sehnert steps forward and stands next to the defendant.)

MR. DIRENZO: Stand alongside of one another.
(indicating)

~~MR.~~ MR. SEHNERT: We never stood this close together.

THE COURT: Look, Mr. Sehnert, you are asked to do certain things, --

MR. SEHNERT: Yes, sir.

THE COURT: -- not to make any statements.

All right.

Q. Now, you see the defendant and your husband standing in close proximity one to the other? A. Yes, sir.

Q. You do see them, don't you? A. Yes, I do.

Q. At any time on November 2, 1966 did you see your husband and the man that you say robbed you in as close ~~proximity~~ proximity as you see these two men standing in this courtroom together now? A. Not side by side.

Q. How close were they standing together at any given

M. Sehnert - People - Cross

time while you say this robbery was in progress?

A. I would say about three or four feet.

Q. Away from one another? A. That's right. But he was not standing up straight.

Q. When you say "he was not standing up straight", you mean the man that perpetrated the robbery? A. That's right.

Q. Is that correct? A. That is correct.

Q. Well, was he bending over? A. He was crouched.

Q. And he was crouched during the entire period of the robbery? A. Yes, sir.

Q. Never stood erect? A. No, sir.

THE COURT: All right, gentlemen, please--

MR. DIRENZO: All right, I'm through with Mr. Sehnert now, and Mr. Wolfrath.

(The defendant resumes his seat at defense counsel table. Mr. Don Sehnert leaves the courtroom.)

Q. Tell me, Mrs. Sehnert: at any time during any of the testimony you gave yesterday and today, or at any other time, did you ever mention to anyone that the man who perpetrated the robbery on you was in a crouched position?

MR. ALBECHT: Objection as to form, your Honor.

M. Sehnert - People - Gross

THE COURT: Overruled.

A. No. Nobody ever asked me.

Q. I just asked you the question. A. "No".

Q. Now, the next question I'm putting to you -- and you anticipated it: you never mentioned it because nobody ever asked you. Is that correct? A. That is correct.

Q. Now, tell me: is it not a fact that the crouched -- alleged crouched position that you testified to this jury today only came about because you now realize that the defendant is about three and a half inches taller than your husband?

MR. ALBRECHT: Objection as to the statement of course' as to inches and what the difference is.

THE COURT: Insofar as that is concerned, I will sustain the objection.

If you say "a little taller", that's different.

Q. Is it a fact that the reason why you now are testifying you saw the defendant was -- or the man who perpetrated the robbery on you -- in a ~~xx~~ crouched position is because you now realize that the defendant is taller than your husband? A. It is not.

Q. It is not a fact? A. It is not.

M. Sehnert - People - Cross

Q. Now, just so that we can get one thing clear: --

MR. ALBRECHT: I am going to object to that statement.

MR. DIRENZO: I'll withdraw the statement.

Q. Just so there wouldn't be any question about this at all: how long did the entire robbery take place?

A. I would say between seven and eight minutes.

Q. And after the robbery had been consummated, I think you testified that the man who perpetrated the robbery left the premises? A. That is correct.

Q. And then that he returned, after opening the door? A. That is correct.

Q. Now, it is your testimony that from the first moment that you saw the perpetrator up until that very last moment when the door was ~~1~~ opened, that the man that you say perpetrated the robbery was always -- always -- in a crouched position? A. He was never standing up straight.

Q. I just asked you a simple question. Was he always in a crouched position? A. He was.

Q. Now, would you be good enough to explain to this jury, and demonstrate to this jury, in what manner you say he was crouched? A. Do you want me to leave here

M. Sehnert - People - Cross

and come down and show them?

THE COURT: Yes. Would you mind, please?

Q. I don't care how you do it. A. (The witness leaves the witness stand, comes down into the well of the courtroom, and illustrates.) He was in this position at all times.

THE COURT: Indicating, please, now. Describe it.

MR. DIRENZO: You want me to describe it, or the District Attorney?

THE COURT: No, you can describe it.

MR. DIRENZO: Indicating the alleged perpetrator, as described by Mrs. Sehnert, in a forward position, with the buttocks extended. --

Q. Is that correct? A. And with the feet apart.

Q. His legs apart? A. This is correct.

Q. And with his hand extended, with a gun in it?

A. Exactly. That's right.

(The witness resumes the witness stand.)

Q. Now, tell me: ~~when did you~~ Did you tell us there came a time when you saw the perpetrator walk?

A. That is correct.

Q. Now, when you saw him walking, did he keep his legs apart and walk in a crouched position? A. He did not

M. Sehnert - People - Cross

keep his legs apart, but he never stood up straight.

Q. Even when he walked? A. That is correct.

Q. Now, let me ask you this: when you saw him walk, were his legs together or were they apart?

A. I was not looking at his legs when he walked toward us. That I could not tell you.

Q. Well, what were you looking at when he walked?

A. His face and the gun.

Q. You just looked at the face and the gun.

Now, incidentally, when he went to the door was he still crouched? A. He was in not an upright position.

Q. Was he crouched to the extent that you described to this jury? A. Not as much; no.

Q. Is it your testimony that the man who perpetrated the robbery was the same height as your husband while he was in a crouched position? A. As far as I can estimate, yes.

Q. In other words, when you said "I said he was five-seven because he was the same height as my husband, but he was in a crouched position" -- Is that what you're saying? A. That is what I am saying..

Q. Tell me this: recognizing that he was in a crouched position, and recognizing that when you say

M. Sehnert - People - Cross

you saw your husband and the perpetrator in close proximity one to the other, didn't you realize that the perpetrator was taller than your husband because he was in this crouched position? A. Not at a time like that.

Q. When did you first realize that he was taller than five-foot-seven?

MR. ALBRECHT: Objection. Taller than --

THE COURT: * I will allow it. Overruled.

A. (No answer).

Q. Did you hear my question? A. ~~Yes~~ I'm sorry.

Am I to answer it?

THE COURT: Yes.

A. I'm sorry. I did not mean to be rude.

THE COURT: Do you remember the question?

THE WITNESS: Yes. He asked me when I realized he was taller.

THE COURT: When did you first realize he was taller?

THE WITNESS: I don't think I realized it until just recently, in thinking back over the events and realizing that the man had been in a crouched position.

Q. And you came to a realization of it when I had the defendant rise in the courtroom? A. Yes.

M. Schnert - People - Cross

Q. --And when I pointed out to you that he was taller than your husband? A. Yes. Then I thought back.

Q. So that in estimating the man's height at five-foot-seven, it is now your testimony that his height was five-seven in a crouched position? A. Yes, sir.

Q. You are still sure, you're positive, you're absolutely positive, to use your own language, --

THE COURT: How many questions are you going to ask her? Three or four? "You are quite sure"; "absolutely positive". Ask her one question.

Q. All right, let me ask you this. -- I withdraw the question. -- You are now absolutely positive that the defendant in this case is the man that perpetrated the robbery on you? A. I have no doubt whatsoever.

Q. And it's fair to state that you would never change that answer, would you? A. No, I would not.

Q. Incidentally, have you ever made a mistake in your entire life --

MR. ALBRECHT: Objection.

Q. --in making --

MR. ALBRECHT: I thought you were finished, Mr. Direnzo. I'm sorry.

M. Schnert - People - Cross

Q. --in making an identification of any individual?

And I am not talking about a criminal case.

MR. ALERECHE: I am going to object to that question.

THE COURT: You may object, but it will be overruled.

A. I have never had the occasion to have to identify somebody.

Q. I am not talking about a criminal case.

A. I am not --

Q. I am not talking about a lawsuit. Have you ever made a mistake in identifying one person as being somebody else? A. No, sir; because I have never had the occasion.

(Continued on following page)

[illegible]

Middle Wound @ Forearm

881. d

OPERATIONS (include transfusion, biopsy, paracentesis, lumbar puncture, cystoscopy, proctoscopy, etc.)

Debitment & Excursion Book @ Forum

89. 0.

DISCHARGE NOTE

364a. Patient presented to ER & missile wound of @ forearm - initial exam revealed no vascular or sensory deficit of the affected limb - the patient's wound was then debrided & the missile fragment removed. In the operating room - The patient's condition following operation was good & on the following day he was transferred to Bellvue Prison ward at the request of The Police Department.

M.D.

ATD 100

30 31

DATE OF BIRTH: NAME OF
PATIENT'S AGENCY

ST. VINCENT'S HOSPITAL

THE MEDICAL CENTER OF NEW YORK

PATIENT SERVICES RECORD

DISCHARGING CLINIC ☐ EYE & MINOR SURGERY ☐
24-HR. MED. CLINIC ☐ 24-HR. MED. SURG. CLINIC ☐
EMERGENCY DEPT. ☐ AMBULANCE SERVICE ☐ ADMISSION ☐
OTHER ☐

NO. 510

1966 NOV-5 AM 1:29

1966 NOV-5 PM 2:10

TRANSFER TO NURSING UNIT

IF PREVIOUSLY HOSPITALIZED HERE OR
TREATED IN CLINIC GIVE MED. RECORD NO.

MEDICAL RECORD NO.

TRANSFER TO OTHER HOSP.

NAME: *Holbert* *Walter*
AGE: *42* *4* SEX: *M* *M*
DATE: *11/5/66* TIME: *7:00* *PM* *10:00* *PM*
AT WORK: ☐ YES ☐ NO

MODE OF ARRIVAL: *BY BUS* *BY TAXI* *BY CAR* *BY TRAIN* *BY AIR*
CLINIC AND DURATION: *11:00* *11:00* *11:00* *11:00* *11:00*
HISTORY OF ACCIDENT: *11:00* *11:00* *11:00* *11:00* *11:00*

COMPLAIN AND DURATION: *11:00* *11:00* *11:00* *11:00* *11:00*
HISTORY OF ACCIDENT: *11:00* *11:00* *11:00* *11:00* *11:00*

DISPOSITION: *11:00* *11:00* *11:00* *11:00* *11:00*
TREATMENT: *11:00* *11:00* *11:00* *11:00* *11:00*
CLINIC APPL. MADE FOR: *11:00* *11:00* *11:00* *11:00* *11:00*
TO SEE OWN M.D.: *11:00* *11:00* *11:00* *11:00* *11:00*
GIVEN NAME OF M.D.: *11:00* *11:00* *11:00* *11:00* *11:00*

CONSULTATION REQUESTED: *11:00* *11:00* *11:00* *11:00* *11:00*
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ST. VINCENT'S HOSPITAL
AND MEDICAL CENTER OF NEW YORK

HISTORY and PROGRESS NOTES

WOLFRATH, WALTER E. SLV
424 W 22 ST CA
NY NY SLV458 70-8
38 DR. AXELROD-TS
22-57-76 REC 17699--

DATE

11/5

Status

100 SHTs of a 36 y/o w m
suffer 2 c.c. of gunshot wound to forearm
wound has healed

HIST: no other info. he was shot
so close range & just below armpit
lateral. Under surface of mid forearm
left side.

Past Hx: No hx of TB, no Diabetes
No CV disease
No allergies

ROS: gunshot CV
No other
No Rx

Physical:

B.P. 120/80 R=14 T=99 P=66

HEENT: normal

Card: equal expansion
Normal Vesic Breathing

Heard: RR
No MN or D

Abdom: soft, no LSK palpable

Extremities: No swelling lower limbs
normal on examination

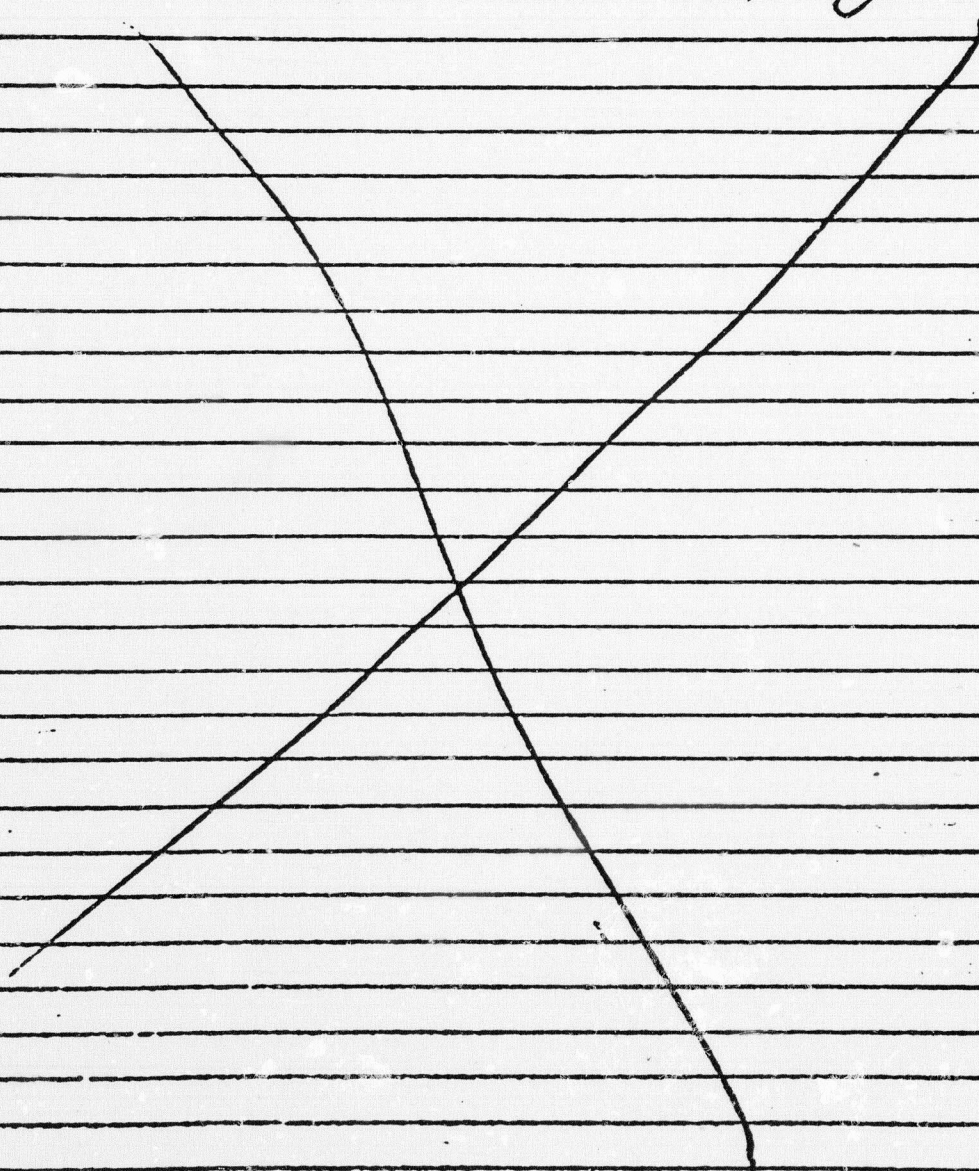
285

Wound: 36 y/o
present wound to left under surface mid forearm

LEAVE BLANK FOR BINDING

Aggravated: Ballot around (C) from
to ft of ulnar left side

Aggravated



ST. VINCENT'S HOSPITAL
AND MEDICAL CENTER OF NEW YORK

HISTORY and PROGRESS NOTES

WOLFRATH, WALTER E. SLV
64 W 22 ST CA
NY NY 10011 PC-S
DR. AXELPOC-72
22-50-76 REG 176992-

DATE

11/5/66 Re Adm Note

The patient was shot with a hand gun at close range 2 hrs ago. bullet entered on lateral volar surface of right (C) forearm, no exit wound. patient lost had a drink at 10³⁰ a.m. PM., nothing P.O. since.

Past Hx

smoke 1 cigarette daily
no heart disease, diabetes or other
serious med illness
med none
allerg none
Fam. non contrib
soc

ROS

cardiac neg
no clumping of black strands
eye neg

78.

healthy appearing w/o w NAD
throat - clear, no intact
T. n. n.

chest - clear to rra

cor. nse, no @

abd. flat, no masses
no organomegaly

gut - soft, no @

exam - single puncture wound mid to volar
lateral aspect of (C) forearm - open
& closes @ hand to pain & no swelling
or vascular loss distal to injury

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Thy severely comminuted midshaft of ulna
 a single large bullet fragment and
 multiple small fragments - no angulation
 or displacement.

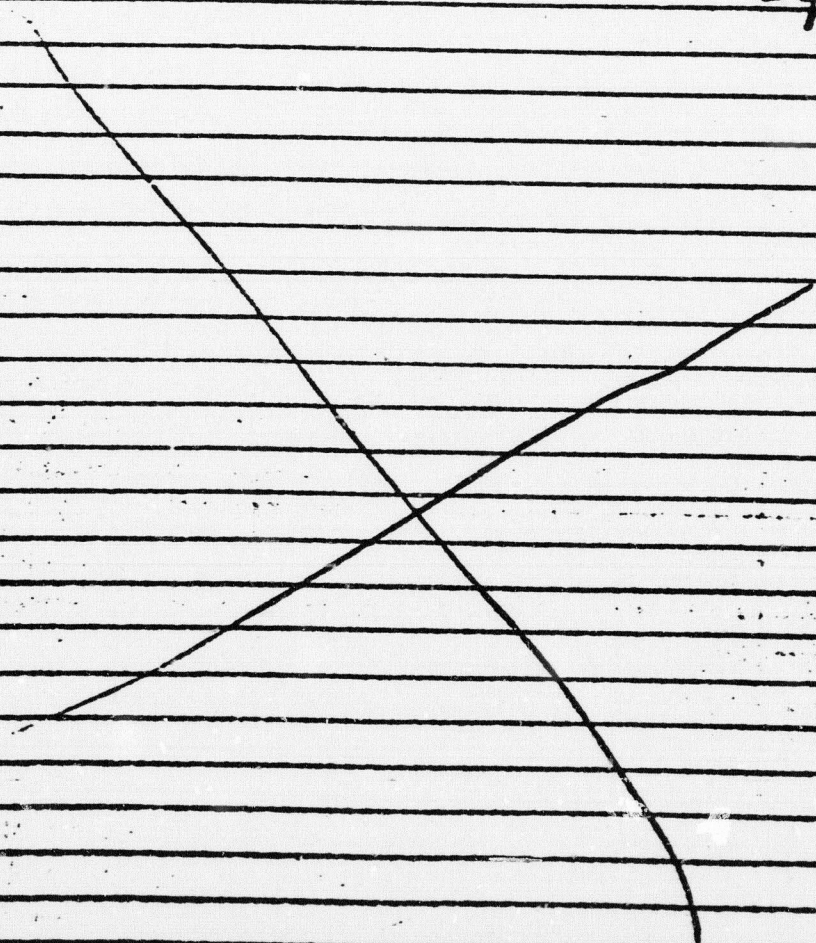
Thy Bullet Wound @ Forearm
 - Ulna Fr

Dr. Arnold attending
 notified

Byrne

Plan Debridement of wound + debridement under
 anesthesia
 @ antibiotics

Byrne



LEAVE BLANK FOR SIGNING

1-98

ST. VINCENT'S HOSPITAL
AND MEDICAL CENTER OF NEW YORK

HISTORY and PROGRESS NOTES

114

WOLFRATH, WALTER E. SLW
424 W 22 ST CA
NY NY SLW4-0 FC-S
36 DR. AXELROD-TS
22-50-76, FLC 87618--

DATE

11/5/ Post OP notes -
Pre OP Dx: Bulleted wound
in fx of ulna

Post OP Dx: none
Surgery: crushed R humerus
Procedure: debridement
removal of shrapnel
Cord on R arm in suspension
in R U

Prep: phlebotomy completed
anesthesia regional I.V. Tylenol
Comp: none

PO left OR in good condition

August 1976

LEAVE BLANK FOR BINDING

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ST. VINCENT'S HOSPITAL AND MEDICAL CENTER OF NEW YORK

CONSENT AND RELEASE FORMS

Instructions to Hospital Officers

1. The patient, if of legal age, conscious, and physically and mentally competent, must sign for himself.
2. Parent, legal guardian or Committee of the Person, must sign for minors or for patients otherwise incompetent to sign.
3. If patient is unconscious or otherwise physically and mentally incapable of signing or knowing the nature of his acts, the operating surgeon must execute Operating Surgeon's Certificate of Emergency and Necessity.
4. Always name the operation, if known and invariably in securing consents for operations specifically include names of operations involving loss of important functions, such as amputation, eye enucleation, hysterectomy, etc.

Consent for Anesthetics and Operations

I, the undersigned, hereby consent to and authorize the administration of any anesthetics and the performance of any operations upon Walter J. Hoffarth which the doctors in attendance at St. Vincent's Hospital deem advisable. If it is necessary to remove any material, said hospital or its agents are authorized to make proper disposition thereof.

Operation (s) Debridement
is (are) specifically included in this authorization and consent.
Signed Walter J. Hoffarth
Witness Barbara L. Lenz Relationship Son

Operating Surgeon's Certificate of Emergency and Necessity

I am a duly licensed physician. On _____ 19____ I was a _____ (Position)
at St. Vincent's Hospital and in attendance on _____ (Name of Patient)
as _____
She was suffering from _____ (Nature of illness)
Upon examination I found the patient unconscious _____
incapable of understanding _____
to be a minor _____

I hereby certify that an operation (s) _____ (Name of Operation)
was emergent and necessary before patient's consent could be obtained.
parent or guardian _____

Name of Operating Surgeon _____

Discharge Against Advice and Release

I, the undersigned, hereby certify that _____
as (is) leaving St. Vincent's Hospital contrary to the advice of the Hospital physicians; that I assume all responsibility for such action and all results thereof, and release said Hospital, its physicians and agents from any and all liability therefor.

Signed _____
Relationship _____

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ST. VINCENT'S HOSPITAL

AND MEDICAL CENTER OF NEW YORK

Date 11/3/66

SLW

OPERATION CHART

History No. 22-50-96

Name WOLFRATH, WALTER

Division Orth.

OPERATORS:

Drs. J. Byrne, E. Axelrod, L. Angioletti.

ANESTHESIA:

Intravenous Regional Block by Dr. R. Geronimo.

PREOPERATIVE DIAGNOSIS:

Bullet Wound of the Left Forearm.

PATHOLOGY:

Penetrating Missile Wound with Entrance Site on the Lower Aspect of the Left Forearm, Mid Third, with Severe Comminution of the ulna. There were no nervous or vascular compromises of the affected extremity.

PROCEDURE:

The patient was placed on the Operating Table in the dorsal supine position, and his left arm extended over an arm board. Intravenous regional block was then administered with double tourniquet protection proximal to the site of injection. After adequate anesthesia had been obtained, the patient's arm was prepped with Phisohex and sterilely draped.

Elliptical skin incision was made longitudinally and surrounding the entrance wound on the volar surface of the forearm. Debridement and exploration of the bullet wound tract was then carried through, down to the point of ulnar fragments. Exploration of the wound tract failed to reveal the missile which was contained within the forearm. The patient's arm was then turned over, and a corresponding longitudinal incision was made on the dorsal aspect of the forearm. Incision was carried through subcutaneous tissue, fascia and muscle, carefully avoiding all major structures, and missile fragment was then exposed in this direction and removed.

The patient was then extended so as to make both skin incisions continuous through and through the forearm. After copious saline irrigation the fascia on either side of the forearm was then closed with interrupted sutures of #0 chromic. Skin and subcutaneous tissue were left open.

POSTOPERATIVE DIAGNOSIS:

Missile wound of left forearm, with comminuted fracture of the ulna.

OPERATION:

Debridement and Excision of missile fragment from left forearm.

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Condition:
Medication:

Good.
Intravenous fluids,
Intravenous Penicillin,
Missile fragment.

Specimen:

None.

Drains:

Case:

Contaminated.

Technique:

#0 chromic catgut.

Dictated by Dr. Byrne/ra/ants
711FA

John P. Byrne

ST. VINCENT'S HOSPITAL

AND MEDICAL CENTER OF NEW YORK

OUT-PATIENT SERVICES RECORD

DISTRESSING CLINIC ☐ EYE & MOUTH SURGERY ☐
 24-HR. PBL. CLINIC ☐ 24-HR. NER. SURG. CLINIC ☐
 EMERGENCY DEPT. ☐ AMBULANCE SERVICE ☐ ADMISSION ☐
 OTHER ☐

IS PREVIOUSLY HOSPITALIZED HERE OR
 TREATED IN CLINIC OR MED. RECORDS NO.

NAME *Holzfelt* DOB *4-29-22*

SEX *M* RACE *W*

NO. *429*

S. 2nd 510
 11-5-66

LOCATION OF ADMISSION

TRANSFER TO NURSING HOME

TRANSFER TO OTHER HOSP.

IN
 REQUEST

IN
 REQUEST

DATE OF EXAM *11-5-66* COMPLETION *Q* PHYSICIAN *Dr. J. J. J.*

EXAM *Chest* FOR *fb, 84*

CLINICAL DATA *fb, 84*

PRELIMINARY WET INTERPRETATION

EXAM *fb, 84*

CLINICAL DATA *fb, 84*

PRELIMINARY WET INTERPRETATION

EXAM *fb, 84*

CLINICAL DATA *fb, 84*

PRELIMINARY WET INTERPRETATION

EXAM *fb, 84*

CLINICAL DATA *fb, 84*

PRELIMINARY WET INTERPRETATION

EXAM *fb, 84*

CLINICAL DATA *fb, 84*

PRELIMINARY WET INTERPRETATION

EXAM *fb, 84*

11-5-66 Chest:

PA chest--The heart is normal. The lung fields are clear. The visualized bony structures are intact.

Impression: Normal heart and lungs.

Left Forearm:

Views of the left forearm show a comminuted fracture involving the middle and upper third of the ulna in fairly good position. Multiple metallic fragments are seen in the projection of the soft tissue and represent fragments of a bullet.

Impression: Comminuted fracture of the left ulna in fairly good position and alignment. Bullet fragments in the projection of the soft tissue; are present.

N. Monal, M.D.

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**ST. VINCENT'S HOSPITAL
AND MEDICAL CENTER OF NEW YORK**

REVISED 1966 (11-1)

1 DAY PERIOD

DATE OF EXAM

DATE OF BIRTH

EXAM DESIRED:

② forearm +
ulna - A-124

PURPOSE OF THIS EXAM:

evaluate
reduction

VOLPRATH, WALTER E.

424 N 24 ST CA

NY NY 10014

DR. AXELSON-78

22-60-76 RES 170000

X-RAY DIAGNOSIS

11-5-66 Left Forearm:

AP and oblique views of the left forearm through a plaster cast reveal multiple linear comminuted fractures involving the middle one-third of the left ulna. There are multiple metallic foreign body fragments in the fractured region. The position and alignment of the fractured segments are fairly adequate.

r

L. Completo
L. Completo, M.D.

ST. VINCENT'S HOSPITAL
AND MEDICAL CENTER OF NEW YORK
DOCTOR'S ORDER SHEET

WOLFRATH, WALTER E. SLW
424 W 22 ST CA
NY NY SLW458 PC-3
36 DR. AXELPOUL-73
22-07-78 REG 17699--

Wolfrath Walter

DATE	STANDING AND SPECIAL ORDERS	NURSES' SIGNATURE AND DATE		
		COMPLETED	TRANSFERRED	REQUESTED
11/1/76	Admit Orthopedics: de bullet wound		✓ 11/5	
	① fracture			
	CBC emergency	✓	✓	11/5 ER
	urinalysis emergency	✓	✓	11/5 ER
	FBS, BUN		✓	
	bed rest		✓	
	NPO		✓	
	1000 cc 5% dextrose + 5 millieq	up @ 3:00 in ER	✓	
	aqueous Penicillin to run 8 hours			
	600,000 Penicillin Penicillin IM stat	11/5 ER PRF	✓	
	+ 96h			
	0.5 gram Sheptomycin stat + 9/12h	11/5 ER PRF	✓	
	Dexameth 75 mgm IM 93h pm	40mg	✓	
	No Luminal 200 mgm IM stat	11/5 ER PRF		
	permission for debrideur/embolus		✓	
	anesthesia			
	clergy pm		✓	
	Dexameth 75 mgm		✓	
	Atropine 0.5 mgm		✓	
	vs 93h + check nail beds		✓	
	+ color of fingers tips @ hand			
	chest film	11/5 PRF	✓	
	Byrne		✓	
				295

Petitioners'

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

2

Any Record
St. Vincent

P. H. S. for June

(Duffy, J.)

St Vincent
Hospital

75 CV. 5151 (KTID)

Wells to Walter
11 C. D. 11. 11. 11

Petitioner's

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION
BELLEVUE HOSPITAL CENTER
First Avenue and 27th Street
New York, N. Y. 10016

1
Hom. Records - [unclear]
Bellevue
12-6-76 *id*

DATE: August 11, 1976

RE: WALTER WELFRATH

CHART: 04-03-37

DATE TREATED: 11/6/66 - 11/12/66

Dear Sir:

This is to certify that the attached record is a full and complete record to the best of my knowledge and belief and that all entries made therein were made in the regular course of the hospital's business and that it is in the regular course of the hospital's business to make such entries at the time the event or particular transaction takes place.

Very truly yours,

Frederick R. Graf
Frederick R. Graf
Manager,
Medical Records Department

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Chart No. 14-96-8

Admission Record

Surname <i>Wolfe</i>	First <i>Walter</i>	Middle <i>Walter</i>	Sex <i>M</i>	Age <i>36</i>	Date of Birth <i>11-6-66</i>	Date Admitted <i>11-6-66</i>	Ward or <i>11</i>
Permanent Address <i>424 W 22 St.</i>			Nativity	Color W. ☒ N. ☐	Other (Specify)	Marital Status S. M. W. D.	
Occupation			Dates of Previous In-Patient Admissions				

FOR IN-PATIENT SERVICE ONLY

On discharge record the following data: Use Terms and Codes of Standard Nomenclature

Date discharged *11/12/66* Condition: Improved ☒ Unimproved ☐ Not Treated ☐ A.O.R. ☐ DFinal diagnosis: Main Condition *gunshot wound of (L) forearm* Code No. _____Additional Conditions *ulna fracture* Code No. _____

Code No. _____

Service *11-12* Visiting Dr. *W. H. H.* House Dr. *Conroy*In the following report include: FAMILY HISTORY: hereditary conditions and causes of family deaths.PREVIOUS HISTORY: habits, occupation, childhood diseases, other diseases, operations and injuries.PRESENT CONDITION: Date and mode of onset, possible cause, course, and review of systems.

For trauma, include cause and time of injury.

CC. *Shot in (L) arm -*

P.H. *36 y.o. W.M., sustained a gunshot wound of (L) mid forearm last night during a robbery attempt. Patient is under arrest & police report transfer summary states bullet entered (L) mid forearm, shattered (L) ulna, & came to rest in (L) radius. Lesion distal to the fx site. He has open laceration, removal of bullet & casting of fx last night at St. Vincent's Hosp. He is in pain & expects. No creatinine levels or nerve injury on transfer summary. Patient to monitor pain (R) forearm.*

P.H. *Had injuries until 7 years ago - on no meds. - No Ch, TB, diabetes. Hemorrhoids 1956.*

F.H. *Father died of I.C.H. Grandmother died of diabetes*

R.O.S. *States he's had some 1167 S's put in (L) arm. - No other*

Date _____

Signature _____

The City of New York
Department of Hospitals

Bellerose HOSPITAL

14-90-81

Chart No. _____

PHYSICAL EXAMINATION

Name W. O. O'Leary, Walter Admitted 11-6 10-6 Ward 42

Local Condition	Nose	Throat	Liver	Skin
General Appearance	Mucous Membranes	Cardio vascular	Spleen	Glandular Systems
Eyes	Tongue	Lungs	Kidneys	Bones—Muscles—Joints
Ears	Teeth	Abdomen	Sexual Organs	Nervous System

HEENT → No abnormal noted

Neck → Supple, 0

Lungs → Clear to P.A.

Heart → N.S.R., 0

Abdomen → No masses, tenderness

Neurology → Right arm slight numb of V sensation;
absent 5th fingerOrthopedic:

Forearm cast (only 3" above elbow) 90° elbow neutral
position. Fingers numb, are good color, no swelling.
V sensation along 5th finger.

Imp: Bullet wound, Rx. ②
wound, comminuted, open,
part of debris, removal
of bullet & cast.

Sh. Yell

Signature.....

HISTORY and PROGRESS NOTES

W. J. G. H. W. D. T. S. C. L. R.
S. G. W. H. T. S. C. L. R.
H. J. G. H. W. D. T. S. C. L. R.
S. G. W. H. T. S. C. L. R.
H. J. G. H. W. D. T. S. C. L. R.

DATE

Transfer note.

This 26 yr. old male was brought
into 3 V H emergency room Nov 1st at
1:30 P.M. He had a history of a recent
gunshot wound to the left forearm.

On admission showed comminuted
fracture of distal radius & distal ulna.
Subcutaneous emphysema noted to the distal end of
ulna. He was taken to OR for fixation of the
fractures under the arm. Alignment
of fractures was not maintained.

An incision was then made on the dorsal
aspect of the forearm over the distal
radius and then ulna. Bone fragments
were approximated & a pin was left in place.
Dressings were applied & elbow immobilized
in a cast. Post-op there was good alignment
of fragments & he was on Penicillin & streptomycin
for infection.

Don Mac Manus

R. P. O'Leary

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS
SUMMARY FOR INTER-INSTITUTIONAL TRANSFER OF PATIENT

FROM St. Vincent's HOSPITAL TO Reformed HOSPITAL Date 11/5 1966

PATIENT HISTORY

Surname GULFRATH	First WALTER	Middle E	Sex M	Age 36	Date of Birth 6/11/30	Color W.H.	Relig. C	Baptized	Marital Status
Permanent Address 424 W 32 ST			Time in L		Nativity USA		Dept. Welf. #		S. M. W. D. L. S. Sec. Sec. #
Occupation COOPER			Employer, Name and Address		Hosp. Ins. Co., Name and #		Veteran		
Name of person to be notified in emergency MOTHER - ELIZABETH LEA			Address 130-20 ROCKAWAY BLVD. NY		Apt.		Yes ☐ No ☐		Relation
Father's Name WILLIAM			Nativity USA		Mother's Name ELIZABETH		Nativity		
IN-PATIENT			EMERG. CLINIC			OUT-PATIENT			
Date Admitted 11/5	Service CCH	Ward 52W	Hosp. # 20-50-76		Date Treated		Date Last Treated		Clinic
							O. P. D. #		

MEDICAL SUMMARY

HISTORY (If communicable disease, give history of, or exposure to any communicable disease)

36 y.o. W/M who was shot in D. femur during a robbery attempt.

PHYSICAL SYMPTOMS AND FINDINGS

Bullet wound D. femur, medial aspect, 3 inches, 2-3 inches. Shows instability.

LABORATORY DATA INCLUDING X-RAYS

*Bullet seen in flake part of the arm.
 Communication of joint - 5/1 of ulna.
 Bullet lying about 6-7 cm distal to wound entrance.*

Continued on Reverse Side

Prepare in Duplicate; send Original with Patient to Receiving Hospital and file Duplicate with Case History. The Medical Summary may be omitted from Duplicate Copy.

303

MEDICAL SUMMARY (Cont.)

COURSE IN HOSPITAL OR CLINIC

St. was brought to the S. P. of the
ward was described & the patient's personal
history was made to establish the diagnosis.

PRESENT THERAPY (If diphtheria, record amount of anti-toxin given)

Antibiotic (I.M. Procaine Penicillin)

SEDATIVES

Amt. Prescribed

Time of Last Dose

A.M.
P.M.

Amt.

RECOMMENDED THERAPY

Penicillin & 2 mg. of digitalis
1/2 mg. of morphine

MENTAL STATUS (For psychiatric transfer give statements and behavior of patient indicating psychosis)

FINAL DIAGNOSIS

Acute Myocardial Infarction

REASON FOR TRANSFER

Spontaneous

1/5/66

Signed

A. L. Brown

M.D.

Title

1. Turner

In our opinion the patient described above is, at present, well able to withstand the handling and transportation necessary in the proposed transfer and his or her illness, as diagnosed above, will not be aggravated as a result of the transfer.

APPROVED BY

M.D. Visiting Physician

Date

19

For Psychiatric Transfers

APPROVED BY

M.D. Neuro-Psychiatrist

Date

19

SIGNED BY

M.D. Resident Physician

Date

19

AUTHORIZATION FOR TRANSFER

ACCEPTED BY

Dr. F. T. L. L. L.

Title Resident of Receiving Hosp. for Adm. on

1/6

19

If communicable disease patient, is patient to be returned to sending hospital after recovery from communicable disease? Yes ☐ No ☐

AUTHORIZED FOR TRANSFER BY

Dr. Anthony Marie

Supt. Sending Hospital

Date

1/6

1966

(S. M.)

THE CITY OF NEW YORK — DEPARTMENT OF HOSPITALS

Biller HOSPITAL

1. ALLOW SUFFICIENT SPACE BETWEEN ITEMS TO PROVIDE A BLANK LINE FOR EACH ADMINISTRATION IN THE 24-HOUR PERIOD.
2. INDICATE "AM" OR "PM" AFTER THE TIME.
3. AT THE END OF 7 DAYS DRAW A LINE UNDER THE LAST ENTRY AND REDATE ON THE NEXT LINE.
4. RECORD PERTINENT REACTIONS TO MEDICATION ON THE "NURSES NOTE" (S.R. 5005 AND 5005A).

MEDICATION RECORD

CHART NO.

14-90-81

NAME Wafarath, WalterADMITTED 11-6 1966 WARD 82

MEDICATION

DATE: 11/6/66 TIME - INIT.	DATE: 11/7 TIME - INIT.	DATE: 11/8 TIME - INIT.	DATE: 11/9 TIME - INIT.	DATE: 11/10 TIME - INIT.	DATE: 11/11 TIME - INIT.	DATE: 11/12 TIME - INIT.
----------------------------------	-------------------------------	-------------------------------	-------------------------------	--------------------------------	--------------------------------	--------------------------------

<u>Procaine Penicillin</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 AM</u>	<u>9 PM</u>	<u>9 AM</u>	<u>9 PM</u>
<u>600,000 Im q 4h</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>

<u>Streptomycin 0.5 gm</u>	<u>9 KS</u>	<u>9 AM</u>	<u>9 AM</u>	<u>9 PM</u>	<u>9 AM</u>	<u>9 PM</u>
<u>Im q 4h</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>

<u>Darvon 65 mgm</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>
<u>PO q 4h PRN</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>

<u>Seconal 0.1 gm</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>
<u>PO q 4h PRN</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>	<u>9 KS</u>

	11-13	11-14	11-15	11-16	11-17	11-18	11-19
<u>Procaine Penicillin</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>
<u>600,000 u. Im q 4h</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>
	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>
<u>Streptomycin 0.5 gm</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>
<u>Im q 4h</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>
	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>

<u>Darvon 65 mg</u>							
<u>PO q 4h PRN</u>							

<u>Seconal 0.1 gm</u>							
<u>PO q 4h PRN</u>							

(Over)

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THE CITY OF NEW YORK--DEPARTMENT OF HOSPITALS

BELLER

HOSPITAL

CHART No.

14-90-51

NURSES' NOTES

NAME

Walter Walfrath

ADMITTED

11-6-46

19

WARD

1-6

ADMITTING UNIT

ADMITTED AT A.M. P.M.	ARRIVED VIA AMBULANCE WALK	EXAMINED BY DR. (NAME) Salmon	ADMITTING DIAGNOSIS Open Fr. D. ulna	GENERAL CONDITION GOOD FAIR POOR CRIT.
CHILD BAPTIZED Yes No	CLOTHES TAKEN HOME DESTROYED	PROPERTY TAKEN HOME NONE	BATHED Yes No	BRUISES, BEDSORES, ETC.
Yes No	LISTED	LISTED	Yes No	Area:
PROPERTY TAKEN TO WARD (ITEMIZE)		TAKEN TO WARD No.		AT BY (NAME OF EMPLOYEE) A.M. P.M.

PROPERTY TAKEN TO WARD (ITEMIZE)

ADMITTED AT A.M. P.M.	BY (NAME)	PLACED IN BED Assigned to Bed	CLEAN DIRTY	BODY FAIRLY CLEAN DIRTY	PEDICULI OBSERVED NOT OBS.
PROPERTY RECEIVED ON WARD (ITEMIZE)		DR. (NAME)	NOTIFIED AT A.M. P.M.	DR. (NAME)	RESPONDED AT A.M. P.M.

PATIENT'S COMPLAINTS AND NURSES' OBSERVATION INCLUDING BRUISES, ETC.

364 Patient arrived on ward in which
clean & left room. Strong. Cast on
fingers warm. Status very good.

Date

Time

NURSES' NOTES

Police guard. Dr.
Whitell notified.
Shoes + socks

11/7 8-4

Pt. transferred from
Ortho to X-ray
Dr. Bell notified.
Pt. had X-rays
Police guard notified.

*Record here Feedings and Diets of Infants

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RECORD ACTION USING
FOLLOWING SYMBOLS:

A-Administered
T-Transferred to Treatment
list, etc.
R-Request made
D-Discontinued

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALSBureau Hospital

DOCTORS' ORDER SHEET

Chart No. 14-90-51Name Wheath, Walter

ORDERED		Diets, Standing and Special Orders, Including Laboratory	DISPOSITION				By Whom
Date	By Whom		Action				
			A	T	R	D	
11/6/66	Shutelle	1) Regular Diet					
		2) CCB in diet 400-11-17 Choi					
		3) Warm alcohol at all times					
		4) Encourage finger motion					
		5) Check color & swelling of hand					
		6) Percuss Pw 600,000 in 1st 7/12 L.					
		7) Skipton 500 mg 1st 8/12 L.					
		8) Dexam 65mg po q 4h. per for pain					
		9) Second op 1 1/2 g h.s. per for sleep					
		10) X-Ray - PPT taken P @ 12:00					
11/7	Shutelle	Transfer to Fracture Service					Dr. Hardy
11/11	BSA	MDM po 30cc					Wheat
11/12	Brown	Discharge Return to home					
		in 2 weeks					

TYPE OR PRINT, USING PENCIL OR BALLPOINT PEN

X-RAY REQUEST AND REPORT BELLEVUE HOSPITAL				Use Addressograph Plate or Show:	
DATE OF REQUEST 11/7/66				CASE #, UNIT #	
REQUESTED BY (ATTENDING) Francis				NAME, SEX 36 y.o. Male	
PER DOCTOR Shutelle				DATE OF BIRTH, WARD, CLINIC K-2. (Fracturing wrist)	
PATIENT CAN COME TO X-RAY ☐ AMBULATORY ☒ WHEEL CHAIR ☐ STRETCHER				SOCIAL SEC. #	
HAS PT. HAD ANY X-RAYS AT BELLEVUE IN LAST 5 YEARS ☐ YES ☒ NO				DATE LAST X-RAY	
Rt. Lt.	Both	Rt. Lt.	Both	☐ Skull ☐ Sella Turcica ☐ Intr. Auditory Canal ☐ Orbits ☐ Optic Foramina ☐ Paranasal Sinuses ☐ Mastoids ☐ Facial Bones ☐ Mandible ☐ Nasal Bones ☐ T.M. Joints	
☐ Clavicle	☐	☐ Hip	☐	☐ Chest ☐ Sternum ☐ Esophagus ☐ G.I. ☐ Sm. Intestine ☐ Colon ☐ Gall Bladder ☐ I.V. Cholangiogram ☐ T-Tube Cholangiogram	
☐ Shoulder	☐	☐ Femur	☐	☐ Abdomen ☐ KUB ☐ Pyelogram I.V. ☐ Pyelogram Retrograde ☐ Cystogram ☐ Pelvimetry ☐ Placentogram ☐ Salpingogram ☐ Mammogram	
☐ Scapula	☐	☐ Knee	☐	EMERGENCY	
☐ Humerus	☐	☐ Tibia-Fibula	☐		
☐ Elbow	☐	☐ Ankle	☐		
☐ Forearm	☐	☐ Foot	☐		
☐ Wrist	☐	☐ Ankle & Foot	☐		
☐ Hand	☐	☐ Ribs	☐		
				☐ Finger ☐ Toe ☐ Cervical Spine ☐ Thoracic Spine ☐ Lumbar Spine ☐ Entire Spine ☐ Pelvis ☐ Bone Age ☐ Metastatic Survey	
OTHER EXAMINATIONS OR SPECIAL VIEWS					
PERTINENT HISTORY, PHYSICAL AND LAB. FINDINGS Bullet wound - comminuted Fr @ ulna - left forearm 11/5/66. -					
CLINICAL DIAGNOSIS As above. -					
DATE APPT.	TIME APPT.	A.M. P.M.	WARD NOTIFIED BY	PERSON TOLD H.K. YAZDANI	RADIOLOGIST
COMMENT					
REPORT					

AP and lateral views of the ~~upper~~ tibia and ulna through a plaster cast reveals a comminuted fracture of ulna. The fragments are in satisfactory position. Metallic densities possibly bullet, fragments noted.

H.K. YAZDANI, M.D. WS
N.E. CHASE, M.D.

THE CITY OF NEW YORK DEPARTMENT OF HOSPITALS

HOSPITAL St Vincent Hosp Date 11/6 Call No. Trans
Place of Call (Print) Floor Apt. No.

Type of Call: Prisoner Call rec'd from: PS
Emer. ☐ Non-E. ☐ Hold ☐ Home C. ☐ P.D. ☐ Radio ☐ Civ. ☐ Pick-up ☐ HD ☐
Call rec'd by: OPER #36

If patient not removed, give reason and arrangements made at scene for pt.

No pt. found ☐ A. O. R. ☐ Prem. amb. ☐ Commun. Disease ☐ M. E. ☐

Patient removed to

Own hosp. ☐ Hosp. ☐ Own home ☐ Other ☐

Patient's Name (Print)

Walfrath Walter

Residence (Print)

424 W 22 St

Age 36 Sex M Race Cauc Religion C Marital Status

S. ☐ M. ☐ W. ☒ (D) L.S.

Nearest Relative or Friend (Print)

Lea Elizabeth Relationship mother

Address (Print)

130-20 Rockaway Blvd NY

Patient's Occupation

Super Employed ☐ Yes ☐ No ☐ W.C.C. ☐ Yes ☐ No ☐ Potential Liab. ☐ Yes ☐ No ☐

If employed, Name and Address of Employer

If accident, describe (When vehicle is involved, make entries on other side)

If First Aid given, describe

Police Officer Crawfear Amb. No. 305

Badge No. 24650 Pct. 6 Rivera

Signature of Amb. Attendant Gallop

Diagnosis

Remarks

Signature of Physician

BELOW TO BE FILLED BY ADMITTING OFFICE

Disposition of Patient		Notifications				
		Agency	Subject	Date	Hour	By Whom
Admitted to own hosp.	☐	<u>Prisoner</u> <u>BH 26 St</u>				
Treated and released	☐					
Taken by amb. to:						
Other hosp.	☐					
Home or other place	☐					
Died in transit	☐					

Walter Wolff

NEW YORK UNIVERSITY MEDICAL CENTER
2ND & 4TH (N.Y.U.) SURG. DIVISIONS - BELLEVUE HOSPITAL

24-03-37 P

FRACTURE SUMMARY

HISTORY #

NAME Walter Wolff AGE 36 RACE W SEX M : WARD K-2 ADMITTED 11-6
ADDRESS _____ DISCHARGED _____
MODE AND DATE OF INJURY shot in (L) arm by police if not done
COMPOUND _____ LACERATED _____ PUNCTURED _____
OTHER INJURIES (INCLUDING LOCAL NERVE OR VASCULAR INJURY) _____

X-RAY (DETAILED DESCRIPTION WITH DATES, FILM NO. ETC.)

Commenced radiograph fracture of ulna

INITIAL TREATMENT (WITH DATES)

A. CLOSED REDUCT. - TYPE OF CAST _____ POSITION _____
TRACTION _____ TYPE, DATES ETC _____

3. OPEN REDUCT. _____ HOURS AFTER INJURY _____
DEBRIDEMENT _____ RX HOURS AFTER INJURY _____
INTERNAL FIXATION (TYPE) _____ DATE _____
TRACTION (TYPE) _____ DATE _____
CAST (TYPE) _____ DATE _____ WOUND CLOSED OR OPEN _____

PIN INCORPORATED IN PLASTER (DATE) _____ ON CRUTCHES (DATE) _____

CAST CHANGE (DATE) _____ STATUS OF WOUND _____

SKIN GRAFTS OR SECONDARY CLOSURE (DATES) _____

OTHER TREATMENT (STATE TYPE, DATE ETC) _____

(OVER)

SUMMARY OF HOSPITAL COURSE

36 y.o. W → shot in (D) femur
 by police - pt seen in St Vincent Hosp
 Transferred to Bellevue - Had
 debridement of wound, removal of bullet
 & casting of arm (90° elbow - neutral)
 Forearm - (one arm cast) for comminuted
 mid shaft Ufr femur
 Pt placed on morphine & streptomycin
 pt afebrile; 3 swellings, pain in neck
 in cast Discharged on morphine
 to R.T.C. in 2 weeks

FUNCTIONAL RESULT

COMPLICATIONS (CODE ETC - SEE NOMENCLATURE FOR PROPER CODE)

PRESSURE SORES

PIN SITE INFECTION

WOUND INFECTION (OPERATIVE WOUND)

DIAGNOSIS) - PRIMARY (CODE NO.)

gunshot wound of (D) femur

ON)

DISCHARGE) SECONDARY (CODE NO.)

with (D) mid shaft comminuted fracture

ASSOCIATED DISEASES OR CONDITIONS (CODE NO.)

CONDITION)

CURED

IMPROVED

UNIMPROVED

DIED

ON)

DISCHARGE) (USE CIRCLE)

AUTOPSY - YES

NO

ASSISTANT RESIDENT'S SIGNATURE

Berman (Lencovs)

(OVER)

1970 PDR

Published by MEDICAL ECONOMICS, INC.

TWENTY-FOURTH EDITION

PHYSICIANS'
DESK REFERENCE

PHARMACEUTICALS

AND CHEMICALS

For Health Professionals

Winthrop—Cont.

and, as preservative, methylparaben 0.1 per cent). Multiple dose vials of 50 ml. 2 per cent of the anesthetic in sterile isotonic solution (containing sodium chloride, without preservative). Ampuls of 2 ml., boxes of 10 and 100.

For nerve block, caudal, epidural, and infiltration anesthesia, 1 per cent and 1.5 per cent of the anesthetic, in sterile, isobaric modified Ringer's solution (containing sodium chloride, calcium chloride, and potassium chloride without preservative). Single dose vials of 30 ml.

2 per cent of the anesthetic, in sterile, isobaric modified Ringer's solution (containing sodium chloride, calcium chloride, and potassium chloride without preservative). Single dose vials of 20 ml.

The pH of these solutions is adjusted between 4.5 and 6.8 with sodium hydroxide or hydrochloric acid.

Carbocaine hydrochloride (brand of mepivacaine hydrochloride) solutions may be autoclaved.

DEMEROL® Hydrochloride (and of meperidine hydrochloride, NF)

Action: Analgesic, spasmolytic, sedative. **Indications:** Demerol hydrochloride is indicated for the relief of pain, particularly that associated with smooth muscle spasm: gastrointestinal, biliary, and genitourinary. It is effective for the control of preoperative and postoperative pain, and for preoperative preparation in order to relieve apprehension. In medical and neurologic disorders Demerol hydrochloride brings rapid relief of pain and may be used in lieu of opiates without production of constipation and with much less risk of respiratory depression.

Warning: May be habit forming. Narcotic blank required.

Tolerance and Addiction Liability: In New and Nonofficial Code 1963, in the discussion of the addiction liability of Demerol hydrochloride, the Council on Drugs of the American Medical Association states: "The drug possesses addiction liability evidenced by withdrawal symptoms observed in susceptible individuals. The development of tolerance to the drug has been demonstrated in man, and it may be substituted for morphine to prevent the morphine withdrawal syndrome. The development of psychic dependence on meperidine hydrochloride also is likely since the drug produces in some individuals a euphoria that lasts for an hour or more, depending on the dose."

Insofar as addiction liability is concerned the difference between Demerol and morphine is largely one of degree, not kind. Demerol should be employed with the same caution as is morphine. With such caution the beneficial effects of the drug will not be minimized appreciably and the occurrence of addiction to Demerol in the bona-

fide practice of medicine should be rare. In cases of addiction to Demerol the treatment should follow the well established procedure for addiction to other drugs. Immediate discontinuance of the drug is ordinarily not particularly difficult since the so-called "withdrawal symptoms" are either mild or virtually absent. Physical dependence on Demerol is not great, and the principal complaints on withdrawal are insomnia, restlessness, mostly at night, and general malaise. The intense anxiety and body pain that accompany morphine withdrawal are usually not encountered. Recovery is usually rapid with remarkable improvement, including gain in weight, and satisfactory sleep within a week or two. Treatment in a hospital is advised, the drug being stopped immediately on the first day. Since personality problems are usually basic predisposing factors in the development of addiction to Demerol, the most important phase of the treatment, in order to eliminate the likelihood of relapses, is the psychiatric follow-up.

Adverse Reactions and Contraindications: Demerol hydrochloride is generally well tolerated and nontoxic in therapeutic doses. Side effects, although generally of minor importance, occur more frequently in the ambulatory than in the hospitalized patient. They are of brief duration and do not, as a rule, inconvenience the patient to an appreciable degree. They may occur with the first dose or occasionally after several doses. With continued administration they usually subside. Dizziness is the most common side reaction. Patients receiving Demerol hydrochloride should, therefore, be warned against driving vehicles or unnecessarily exposing themselves to hazards.

Nausea or vomiting occurs less frequently than after administration of morphine. Flushing of the face, sweating and dryness of the mouth are sometimes noted. More severe reactions are characterized by extreme weakness, hypotension, syncope, profuse perspiration, marked dizziness, and nausea and vomiting. Such reactions may occur occasionally following operation or in debilitated or ambulatory patients. These side effects can often be aborted or decreased in severity if the patient is advised to seek a recumbent position as soon as weakness is noted. If this device is not adequate, vasopressor therapy should be started promptly.

Tolerance to side effects usually develops very quickly if medication is continued with small doses (25 mg.). In contrast to morphine, Demerol produces respiratory depression infrequently, except on too rapid intravenous administration. However, in patients with lesions that cause increased intracranial pressure, respiratory depression has been noted; the drug is therefore considered to be contraindicated in such persons. Because of its atropine-like action, it has also been considered contraindicated in patients with auricular flutter. Like other sedatives and narcotics it

may also exert an antidiuretic effect.

Although a number of authors have found small doses of Demerol hydrochloride (brand of meperidine hydrochloride) of value in tiding very ill asthmatic patients over a crucial time, prolonged administration is not recommended in these cases. Furthermore, some clinicians have pointed out that although sudden death can occur from asthma alone, use of morphine, Demerol, analgesics, and curare is exceedingly dangerous in patients with asthma. With therapeutic doses, minimal signs of cerebral irritation such as tremors and uncoordinated muscular movements may occur in an occasional patient. In such cases the dose should be decreased or the drug discontinued.

The activity of many drugs including Demerol is greatly (and even dangerously) potentiated in patients receiving monoamine oxidase inhibitors, isoniazid or its derivatives, carphenazine (Prokettazine brand), isocarboxid (Marplan brand), nialamide (Niamid brand), phenelzine (Nardil brand), and tranylcypromine (Parnate brand). Serious and even fatal reactions (with coma, hypotension, and peripheral vascular collapse) have been reported in some instances in which a narcotic was administered to a patient who (unknown to the physician) was taking a monoamine oxidase inhibitor. The latter compounds retard the metabolism and detoxification of many drugs. In the treatment of reactions the intravenous use of hydrocortisone and vasopressors has been recommended.

Antidote: Nalorphine (Nalline®) hydrochloride and levallorphan (Lorfan®) are specific antidotes against respiratory depression which may result from overdose or unusual sensitivity to narcotics, including Demerol. The recommended dose of nalorphine is from 5 to 10 mg. in adults and from 1 to 2 mg. in small children, administered intravenously, intramuscularly, or subcutaneously. Levallorphan may be used in doses approximately one-tenth those of nalorphine. The same dose of either drug may be repeated in 10 to 20 minutes if necessary. Doses of 0.2 mg. of nalorphine and of 0.05 mg. of levallorphan have also been given to newborn infants by injecting into the umbilical vein and repeating if required.

Dose and Administration: The average adult dose for most medical and surgical conditions is 100 mg. administered intramuscularly or subcutaneously. However, since smaller doses may be sufficient for the control of pain, it is suggested that the initial dose be 50 mg. and subsequent doses be increased or decreased as necessary. For very severe pain 150 mg. may sometimes be required. An analgesic effect is apparent within 15 minutes and lasts for two to six hours, with an average duration of three hours. Pain of visceral origin is relieved for longer periods than pain arising from skeletal or neuritic structures.

Intramuscular administration is usually the best method for the relief of severe pain. Subcutaneous administration is feasible for occasional use, but when frequent daily injections over a prolonged period are necessary intramuscular injection is preferred. Intravenous administration does not offer sufficient advantages for routine use. If it is indicated for special reasons (for example, during anesthesia), the injection should be made very slowly. Rapid intravenous injection increases the severity and frequency of side effects. When Demerol is given parenterally, especially intravenously, the patient should be lying down. In ambulatory patients administration should generally be by mouth only.

For preoperative medication, Demerol hydrochloride is administered intramuscularly, subcutaneously, or orally in doses of 50 to 100 mg. from 30 to 90 minutes before the beginning of anesthesia. (See table.) For preoperative use in infants and chil-

den: From 1 to 2 years, 5 per cent solution); 5 to 6 years, 0.33 ml.); 6 to 8 years, 37 mg. (0.75 mg. 13 year. Scopolamine may be added to 4 years; 1/300 grain 1/200 grain in older child. Postoperatively Demerol (brand of meperidine) used as an analgesic in doses of 50 to 100 mg. or less. Doses are usually given at 4-hour intervals. Some patients may have moderate fall in blood pressure attributable to the sedative effect of Demerol. Although important, should it occur degree in the immediate period, a vasopressor may be given (from 2 to 5 mg. of Neo-Sinadrine [brand of norepinephrine] intramuscularly 0.5 mg. intravenously). For the production of a surgical anesthesia, several satisfactory methods may be employed. Demerol hydrochloride, 50 mg., may be given intramuscularly as soon as possible after regular intervals. The dose may be repeated at one to three hours if necessary. When amnesia is desired, in addition to analgesia, scopolamine hydrobromide may be given with Demerol hydrochloride. It should be noted that the action of barbiturates is potentiated by Demerol hydrochloride and should be reduced considerably.

The following routine may be employed: When the patient is in the operating room, regardless of the site of the cervix, 100 mg. of Demerol and 1/100 grain of scopolamine intramuscularly followed 45 minutes later by 50 mg. of Demerol hydrochloride with 1/200 grain of scopolamine. There is need for continuation, 100 mg. of Demerol given every four hours; scopolamine every two hours. **How Supplied:** For parenteral use: Demerol Hydrochloride (50 mg. per 1 ml. ampul); ampuls of 0.5 ml. (25 mg.), and 1.5 ml. (75 mg.) and 100; ampuls of 2 ml. (100 mg.), 25, and 100; cartons of 10; disposable plastic syring (100 mg. per 1 ml. syringe) (50 mg. per 0.5 ml. syringe).

7.5 per cent solution in cartridge of 1 ml. (75 mg.) plastic syring, boxes of 2 ml. disposable plastic syring (100 mg. per 1 ml. syringe), boxes of 10. 10 per cent solution in vials of 20 ml.; ampuls of 10 ml. (100 mg.) in disposable plastic syring (100 mg. per 1 ml. syringe), boxes of 10. The ampuls are designed to permit other compatible medication.

Demerol Hydrochloride and Demerol Hydrobromide (hydrochloride and scopolamine hydrobromide) Vials of 30 ml. for oral use.

Demerol Hydrochloride mg., bottles of 100, 250, and 500 mg.; bottles of 100 mg., bottles of 250 mg., bottles of 500 mg. per 5 ml. teaspoon. **Demerol Hydrobromide** mg., bottles of 150 mg., bottles of 300 mg., bottles of 450 mg. (1/2 grain) of Demerol, bottles of 100 and

Comparative Addiction Liability of Several Analgesic Drugs
(D. W. Maurer and V. H. Vogel: Narcotics and Narcotics Addiction, Springfield, Ill., Charles C Thomas, 1954, p. 64.)

Drug	Physical dependence liability	Psychic or emotional dependence liability	Rapidity of development of tolerance	Total points
Morphine	4	4	4	12
Heroin	4	4	4	12
Dihydromorphinone	4	4	4	12
Metopon	3	4	3	10
Demerol	2	3	2	7
Methadone	1	4	1	6
Codeine	2	1	2	5

The numeral 4 indicates that the particular drug has the greatest liability of all the drugs with respect to the particular addiction characteristic shown; the numeral 1 indicates the lowest liability. The sum of the three characteristics gives the total addiction liability, the highest possible addiction liability score being 12 and the lowest being 0.

diuretic effect.

Authors have found Demerol hydrochloride (Demerol hydrochloride) of all asthmatic patients prolonged administration in these cases. Physicians have pointed out that death can occur from use of morphine, and curare is exceedingly potent with asthma. In such cases increased or the drug

any drugs including even dangerously receiving monoamines, isoniazid or its derivative (Proketazone (Marplan brand), phenelzine and tranlycypromine and even fatal hypotension, and collapse) have been reported in which a patient who was taking a barbiturate. The latter drug is used in the treatment of the treatment of soporifics has been

(Nalline®) hydrochloride (Lorfan®) are against respiratory result from over-sensitivity to narcotics. The recommended dose is 10 mg. in adults and 5 mg. in small children, administered intramuscularly. Vallophan may be given in a dose of approximately one-tenth the same dose of elixir in 10 to 20 minutes of 0.2 mg. of naloxone. Vallophan is used in newborn infants by the intravenous and re-

ation: The average medical and surgical administration of Demerol is usually given intramuscularly. However, it may be given intravenously. It is suggested that the dose be given in frequent doses as necessary. For severe pain, the effect is apparent within 10 to 15 minutes and lasts for two to six hours. The duration of three hours is relieved for pain arising from skeletal

ration is usually the relief of severe pain. It is feasible for frequent daily injections in the period of need. It does not offer for routine use. If it is given for reasons (for example), the injection is given slowly. Rapid increases the severity of effects. When Demerol is given intravenously, it should be lying down. Patients administration mouth only.

ation, Demerol hydrochloride intramuscularly or orally in doses of 90 minutes before anesthesia. (See table.)

in infants and chil-

From 1 to 2 years, 13 mg. (0.25 ml. of 5 per cent solution); 3 to 4 years, 18 mg. (0.33 ml.); 5 to 6 years, 25 mg. (0.5 ml.); 7 to 8 years, 37 mg. (0.75 ml.); 9 to 12 years, 50 mg. (1 ml.); 13 years, 75 mg. (1.5 ml.). Scopolamine may be added, 1/450 grain, up to 4 years; 1/300 grain from 5 to 12 years; 1/200 grain in older children.

Postoperatively Demerol hydrochloride (brand of meperidine hydrochloride) is used as an analgesic in lieu of opiates in doses of 50 to 100 mg. orally or intramuscularly. Doses are usually repeated at four hour intervals. Some patients may show a moderate fall in blood pressure often attributable to the sedative-relaxant effect of Demerol. Although it is generally unimportant, should it occur to an undesirable degree in the immediate postoperative period, a vasopressor may be administered from 2 to 5 mg. of Neo-Synephrine® hydrochloride (brand of phenylephrine hydrochloride) intramuscularly or from 0.1 to 0.5 mg. intravenously.

For the production of analgesia in obstetrics, several satisfactory methods may be employed. Demerol hydrochloride, 100 mg., may be given intramuscularly or subcutaneously as soon as contractions occur at regular intervals. The dose may be repeated at one to three hour intervals if necessary. When amnesia is desired in addition to analgesia, scopolamine or a rapid-acting barbiturate may be used with Demerol hydrochloride. It should be kept in mind that the action of barbiturates is potentiated by Demerol hydrochloride. The dose of the barbiturate should therefore be reduced considerably.

The following routine is frequently employed: When the patient complains of pain, regardless of the state of dilatation of the cervix, 100 mg. of Demerol hydrochloride and 1/100 grain of scopolamine are administered intramuscularly or subcutaneously followed 45 minutes later by 1/150 grain of scopolamine. Four hours later 100 mg. of Demerol hydrochloride are given with 1/200 grain of scopolamine. When there is need for continuing the medication, 100 mg. of Demerol hydrochloride are given every four hours and 1/200 grain of scopolamine every two hours.

How Supplied: For parenteral use.

Demerol Hydrochloride: 5 per cent solution (50 mg. per 1 ml.), vials of 10 and 30 ml.; ampuls of 0.5 ml. (25 mg.), 1 ml. (50 mg.), and 1.5 ml. (75 mg.); boxes of 25 and 100; ampuls of 2 ml. (100 mg.), boxes of 5, 25, and 100; cartridge of 1 ml. (50 mg.) in disposable plastic syringes, boxes of 10; also 1 ml. in 2 ml. disposable plastic syringes (50 mg. per ml.), boxes of 10.

7.5 per cent solution (75 mg. per 1 ml.), cartridge of 1 ml. (75 mg.) in disposable plastic syringes, boxes of 10; also 1 ml. in 2 ml. disposable plastic syringes (75 mg. per ml.), boxes of 10.

10 per cent solution (100 mg. per 1 ml.), vials of 20 ml.; ampuls of 1 ml. (100 mg.), boxes of 10; cartridge of 1 ml. (100 mg.) in disposable plastic syringes, boxes of 10. The half-filled syringes are designed to permit mixture with other compatible medication.

Demerol Hydrochloride with Scopolamine Hydrobromide (50 mg. of Demerol hydrochloride and 1/300 grain of scopolamine hydrobromide per 1 ml.): Vials of 30 ml.

For oral use.

Demerol Hydrochloride: Tablets of 50 mg., bottles of 100, 250, 500, and 1000; tablets of 100 mg., bottles of 100 and 500. Elixir, nonalcoholic, banana flavor, 50 mg. per 5 ml. teaspoon, bottles of 16 fl. oz. Powder, vials of 15 Gm.

A.P.C. with Demerol: Scored tablets containing 200 mg. (3 grains) of acetylsalicylic acid, 150 mg. (2½ grains) of phenacetin, 30 mg. (½ grain) of caffeine, 30 mg. (½ grain) of Demerol hydrochloride, bottles of 100 and 1000.

Dosage

Indications	Adult dose	Route of administration ¹	Frequency ^{2,3}
Medicine			
Biliary and renal colic	100-150 mg.	I.M., subcutaneous, or oral	Repeated in 1 to 3 hours as needed
Gastrointestinal colic	50-150 mg.	Oral, subcutaneous, or I.M.	Repeated at 3 or 4 hr. intervals as needed
Pleuritic pain	50-100 mg.	Oral, subcutaneous, or I.M.	Repeated at 3 or 4 hr. intervals as needed
Cardiovascular pain	50-150 mg.	I.M., subcutaneous, or oral	Repeated in 1 hour or more as needed
Surgery			
Preoperative medication ⁴	50-100 mg.	Subcutaneous or I.M.	30 to 90 min. before beginning of anesthesia
Postoperative pain	50-100 mg.	Subcutaneous, I.M., or oral	Repeated at 3 or 4 hr. intervals as needed
Fracture pain	50-150 mg.	Subcutaneous, I.M., or oral	Repeated at 3 or 4 hr. intervals as needed
Bone metastases	50-150 mg.	Oral, I.M., or subcutaneous	Repeated at 3 or 4 hr. intervals as needed
Obstetrics			
Labor pain ⁴	50-100 mg.	I.M. or subcutaneous	When pain becomes regular. Repeated 3 or 4 times at from 1 to 4 hour intervals as needed
Pediatrics			
For severe pain (e.g., burns, colic, etc.) Also preoperatively with or without scopolamine	Dose for children 0.5-0.8 mg. per lb.	Oral (elixir or tablets), I.M., or subcutaneous	Repeated at 3 or 4 hr. intervals as needed

- For ambulant patients, only oral administration is advised. As dizziness and faintness may sometimes occur, ambulant patients should be warned against driving vehicles or assuming other unnecessary physical risks. Subcutaneous administration is feasible for occasional use. Intramuscular injection is preferred when frequent repeated doses are required. Intravenous administration does not offer sufficient advantages for routine use. If it is indicated for special reasons, the injection should be made very slowly. Rapid intravenous injection increases the severity and frequency of side effects. When Demerol is given parenterally, especially intravenously, the patient should be lying down.
- Demerol should not be given over prolonged periods, except in certain hopeless conditions (e.g., carcinoma).
- A.P.C. with Demerol may be used in place of Demerol tablets or elixir in doses of 1 A.P.C. with Demerol for each 50 mg. of plain Demerol.
- Demerol with Scopolamine may be used instead of plain Demerol.

Note: The pH of all Demerol solutions is adjusted between 3.5 and 6.0 with sodium hydroxide or hydrochloric acid. Multiple dose vials contain metacresol 9.1 per cent as preservative. No preservatives are added to the ampuls and disposable syringes. [Shown in Product Identification Section]

HYPAAQUE® SODIUM 20% B
(brand of sodium diatrizoate)

Description: A radiopaque medium for retrograde pyelography.

Indications: Retrograde pyelography is often performed when excretory urography is contraindicated, i.e., in the presence of:

- Severe liver disorders
- Uremia
- Anuria
- All renal lesions responsible for inadequate diuresis. When the concentration of blood urea is high and the concentrating power of the kidney impaired, intravenous urography may yield little or no anatomic data and may become hazardous to the patient.
- Retrograde pyelography is also indicated in the patient who has manifested an allergic or hypersensitivity reaction to intravenously administered contrast media during previous urographic procedures.

Precautions: It has long been known that oliguria or anuria may rarely follow bilateral retrograde pyelography or uncomplicated cystoscopic ureteral manipulation. Various mechanisms have been proposed to explain this occurrence, such as reflex anuria, edema, and occlusion of the ureteral orifices from local trauma, pressure, manipulation, sensitivity to the radiopaque medium or to residual disinfecting antiseptic

on ureteral catheters, pyelotubular backflow, transient interstitial renal edema with increased pressure, and reduced renal blood flow. Because of the possibility of acute renal failure following bilateral retrograde pyelography, some authors conclude that retrograde pyelography should be done on only one side at a time.

Adverse Reactions: The nonirritating properties of the medium minimize the likelihood of ureteropelvic spasm; in addition, a more natural outline of the upper urinary tract is obtained because of these properties. There is also a decrease in the incidence and severity of discomfort and colic following retrograde examination. Excellent tolerance was evidenced by notably few untoward reactions. Minor side reactions, which occurred in a few patients, consisted of nausea, vomiting, excessive salivation, and sweating. There was no indication of irritation of the urinary tract mucosa that could be attributed to the medium.

With Hypaque sodium (brand of sodium diatrizoate) 20 per cent, reflux into the blood stream or lymphatics (pyelovenous or pyelolymphatic backflow) as a result of undue pressure of administration is not apt to result in a generalized reaction, since this concentration with the 50 per cent solution has been well tolerated.

Dosage and Administration: Considerable variations in renal pelvic capacity account for differences in the quantities of radiopaque suggested for retrograde pyelography. The solution is introduced slowly, avoiding force, and is immediately stopped at the first evidence of renal or abdominal discomfort to avoid overdistention or in-

Continued on next page

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

Barbara MacGregor , being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for Respondent-Appellant herein. On the 7th day of December , 1977 , he served the annexed upon the following named person :

Martin Gotkin
250 West 57th Street
New York, New York 10019

Attorney in the within entitled proceeding by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

Barbara MacGregor

Sworn to before me this
7th day of December , 1977

Allen S. Moller
Assistant Attorney General
of the State of New York

BEST COPY AVAILABLE